SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No.

CECIL I. HUST PETITIONER,

vs.

MOORE-McCORMACK LINES, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

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[fol. 1] [Caption omitted]

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IN THE SUPREME COURT OF OREGON

CECIL I. HUST, Plaintiff-Respondent,

vs.

MOORE-MCCORMACK LINES, INC., Defendant-Appellant

PRAECIPE FOR RECORD—Filed October 1, 1945

To the Clerk of the Above Entitled Court:

In order to enable the plaintiff-respondent herein to apply for a writ of certiorari from the Supreme Court of the United States, the said plaintiff-respondent requests you to prepare a transcript of the record of this cause, duly certified and authenticated, consisting of the following documents and portions of said record, showing the dates thereof.

1. Complaint.
2. Answer.
3. Reply.
4. Verdict, together with the direction for entry of judgment thereon.
5. Judgment of the Circuit Court of the State of Oregon for Multnomah County.
6. Motion for Judgment Notwithstanding the Verdict and Order Denying the Same.
7. Notice of Appeal and Proof of Service thereof.
8. Undertaking on Appeal.
9. Order Allowing Appeal.
10. Assignments of Error.
11. Opinion of Oregon Supreme Court reversing judgment.
12. Final Judgment and Mandate based on said opinion.
13. Journal entry or Order overruling Petition for re-[fols. 4-7] hearing.
14. Petition for order staying execution and enforcement of judgment and mandate to enable application for writ of certiorari and petition for extension thereof.
15. Order staying execution and enforcement of judgment and mandate and order extending same.

16. Bond on application for writ of certiorari and stipulation extending same.

17. The bill of exceptions, including photostatic or otherwise certified copies of exhibits 1, 2, 13, 14, 15, 16, 17, 18, 19, 20, 21, 25, 26 and 27, but omitting all others; and including the attached transcript of testimony omitting the following lines and pages:

* * * * * * *

[fol. 8] 18. This praecipe and the stipulation below.

19. Certificate of the Clerk of the Supreme Court of Oregon.

Dated this 28th day of September, 1945.

(S.) Edwin D. Hicks, Of Attorneys for Plaintiff-Respondent.

Stipulation

It is stipulated that the foregoing designated portions of the record of this cause shall, subject to the reservation below, constitute the record on review, and that the omitted portions of the record have, as counsel are now advised, no bearing upon the issues to be presented upon the application for writ of certiorari; but this shall not preclude either counsel from suggesting a diminution of the record should any of said portions, in the opinion of counsel, become material.

(S.) Edwin D. Hicks, Of Attorneys for Plaintiff-Respondent. (S.) Erskine Wood, Of Attorneys for Defendant-Appellant.

Service of a true copy of the within praecipe and stipulation accepted this 28th day of September, 1945.

(S.) Erskine Wood, Of Attorneys for Defendant-Appellant.

[fol. 9] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH

CECIL I. HUST, Plaintiff,

vs.

MOORE-McCORMACK LINES, INC., a Corporation, Defendant

COMPLAINT—Filed September 24, 1943

Comes now the plaintiff above named and for cause of action against the defendant above named complains and alleges:

I

That at all times herein mentioned, defendant was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware with a principal office and place of business in the City of Portland, County of Multnomah, State of Oregon. That said corporation is engaged generally in the operation of ocean-going ships and vessels carrying freight. Said ships and vessels ply between the Port of Portland, Oregon, and other ports in the United States and various foreign ports. That among said vessels which said defendant corporation operates, manages and controls is a vessel generally known as "a liberty ship", named the S. S. "Mark Hanna".

II

That heretofore and on or about the 9th day of March, 1943, and prior thereto, plaintiff herein was employed by said defendant on said vessel in the capacity of fireman and watertender. That plaintiff in said employment earned the sum of $110.00 per month and found, plus 85¢ per hour for all overtime work performed, together with bonus for sea duty; that plaintiff earned in the aggregate in said employment approximately the sum of $330.00 per month and found. That said plaintiff at the time of the accident hereinafter described was a healthy and able-bodied man of the age of 36 years with a life expectancy of 31.07 years.

[fol. 10] III

That on or about March 17th, 1943, plaintiff while acting in the regular scope and course of his said employment on said vessel, and obeying the commands and directions of defendant, sustained serious and permanent injuries through the negligence and carelessness of defendant, as follows: That on said date said vessel was proceeding in a general westerly direction on the Atlantic Ocean toward the Port of Spain, Trinidad, being in tow at that time by another vessel. That at approximately the hour of 7:30 A. M. on said day, defendant ordered and directed plaintiff and several other seamen to obtain a large mooring line to be used for the purpose of towing; that said mooring line was located in the upper boatswain's locker in the forepeak on the second deck; that said plaintiff with other seamen went below to the second deck in the forepeak for the accomplishment of said purpose and while on the second deck in the forepeak of said vessel, said plaintiff was caused to fall into the lower boatswain's locker to the third deck, a distance of approximately 12 feet, striking on a steel manhole cover projecting approximately six inches above the deck of said boatswain's locker; that said manhole cover had sharp protruding edges and steel nuts on the surface thereof.

IV

That said defendant was careless and negligent in the following particulars, to-wit:

1. In failing and neglecting to provide any light for said boatswain's lockers, and compelling plaintiff to carry on his directed work in total darkness.

2. In failing and neglecting to maintain the guard chain around the opening to the lower boatswain's locker.

3. In maintaining an open aperture to said lower boatswain's locker through which seamen on said vessel could have fallen, and particularly this plaintiff.

4. In requiring this plaintiff to work in a place of danger.

5. In failing and neglecting to warn this plaintiff of the [fol. 11] dangers then and there attendant upon the work which plaintiff was directed to perform.

6. In operating an unseaworthy vessel.

V

That as the direct and proximate result of said negligence of said defendant plaintiff suffered severe bruises and contusions to his lower back and right thigh, a laceration of his right ankle, and compression fractures of the vertebrae of his middle back, for which plaintiff was hospitalized for approximately five weeks, and said injuries necessitated that he wear a body cast, which plaintiff was compelled to endure until on or about July 12th, 1943; that plaintiff has been caused to suffer great and grievous pain, agony and discomfort, and has sustained permanent injuries to the bones, muscles, tendons, sinews and ligaments of his middle back, and plaintiff has been informed and believes, and therefore alleges that he will never be able to follow his occupation as a seaman, all to his damage in the sum of Fifty Thousand ($50,000) Dollars.

VI

That by reason of said injuries, plaintiff has lost wages in the sum of One Thousand — ($1980.00) Dollars which plaintiff alleges by way of special damages.

VII

That this action is brought under the Merchant Marine Act of 1920, Section 33 thereof, and plaintiff hereby elects to maintain said action in the State courts of the State of Oregon and requests a jury trial.

Wherefore, plaintiff prays for judgment against the defendant for the full sum of Fifty Thousand ($50,000.00) Dollars, general damages; for the further sum of One Thousand — ($1980.00) Dollars, special damages; and for plaintiff's costs and disbursements incurred herein.

(S.) Green & Landye & Nels Peterson, Attorneys for Plaintiff.

[fol. 12] *Duly sworn to by Cecil I. Hust. Jurat omitted in printing.*

[fol. 13] [File endorsement omitted]

IN THE CIRCUIT COURT OF MULTNOMAH COUNTY

[Title omitted]

ANSWER—Filed November 23, 1943

Comes now the defendant, and answering the complaint in this cause, admits, denies and alleges as follows:

I

Answering paragraph I, defendant admits its corporate existence as alleged, and that it is engaged in the operation of ships carrying freight, and that some of them ply between Portland and other ports in the United States and other ports of the world. Admits that at the time of the accident alleged it was operating the Liberty ship SS. Mark Hanna for and on behalf of the United States of America, represented by the War Shipping Administration under a written Agency Agreement prescribing and limiting the duties, authority and functions of this defendant. The remaining allegations of said paragraph I defendant denies.

II

Answering paragraph II, defendant denies that plaintiff was employed by said defendant on said vessel or at all. Defendant admits plaintiff's earnings on the ship as alleged; also admits his age, health and life expectancy as alleged. The remaining allegations of said paragraph defendant denies.

[fol. 14] III

Answering paragraph III, defendant admits that plaintiff, on or about March 17, 1943, while acting in the scope of his employment on the ship (but not in any employment by this defendant), fell a distance of approximately 10 or 12 feet and was injured, and that this occurred while the vessel was being towed toward the Port of Spain. The remaining allegations of said paragraph defendant denies.

IV

Defendant denies each and every allegation of paragraph IV.

V

Defendant admits that plaintiff suffered compression fractures of certain vertebrae of his middle back necessitating hospitalization and the wearing for a time of a body cast, but denies each and every other allegation of said paragraph V.

VI

Defendant denies every allegation of paragraph VI.

VII

Defendant admits that the action was attempted to be brought under the Merchant Marine Act of 1920, but denies that it can be; and admits the remaining allegations of said paragraph.

For a further and separate answer and defense, defendant alleges that plaintiff was injured because of his own negligent act in entering a dark place on the ship without attempting to procure any light and without taking any precautions or steps of any kind to see where he was stepping or walking in the semi-darkness.

Wherefore, defendant prays that plaintiff take nothing, and that judgment be entered for defendant accordingly.

(S.) Wood, Matthiessen & Wood, Erskine Wood and L. L. Tatum, Attorneys for Defendant.

[fol. 15] *Duly sworn to by K. C. Tripp. Jurat omitted in printing.*

Service of the foregoing, by receipt of a duly certified copy thereof, in Multnomah County, Oregon, on this 23rd day of November, 1943, is hereby admitted.

(S.) Green & Landye, Of attorneys for Plaintiff.

[fol. 16] IN THE CIRCUIT COURT OF MULTNOMAH COUNTY

[Title omitted]

REPLY—Filed May 15, 1944

Comes now the plaintiff, Cecil I. Hust, and for reply to the "Further and Separate Answer and Defense" of defendant, admits, denies and alleges:

Denies, each and every allegation set forth in said further and separate answer and defense.

Wherefore, plaintiff prays that he have and recover of and from the defendant the relief prayed for in his complaint.

(S.) Green & Landye, Edwin D. Hicks, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 17] *Duly sworn to by Cecil I. Hust. Jurat omitted in printing.*

Due and legal service of the foregoing, by receipt of a duly certified copy thereof, as required by law, is hereby accepted in Multnomah County, Oregon, on this 11th day of May 1944.

(S.) E. Wood, Attorney for Defendant.

[fol. 18] [File endorsement omitted]

IN THE CIRCUIT COURT OF MULTNOMAH COUNTY

[Title omitted]

VERDICT—Filed May 18, 1944

We, the jury, duly empanneled and sworn to try the above entitled civil action, do find our verdict as follows:

We find that Cecil I. Hust, the Plaintiff herein, was an employee of Moore-McCormack Lines, Inc., a corporation, Defendant herein, on the 17th day of March, 1943, and that the said Plaintiff sustained injuries in the course of his

employment with said Defendant Company on the said 17th day of March, 1943.

We do further find our verdict in favor of the Plaintiff, Cecil I. Hust, and against the Defendant, Moore-McCormack Lines, Inc., a corporation, and assess Plaintiff's damages in the sum of $35,000.00.

Dated this 17th day of May, 1944.

(S.) Victor J. Dyck, Foreman.

[fol. 19] IN THE CIRCUIT COURT OF MULTNOMAH COUNTY

CECIL I. HUST, Plaintiff,

vs.

MOORE-McCORMACK LINES, INC., a Corporation, Defendant

JUDGMENT—May 18, 1944

This cause having come on for trial on Friday, the 12th day of May, 1944, before the Honorable Martin W. Hawkins, Judge of the above entitled Court, plaintiff appearing in person and by his attorneys, Green & Landye, by B. A. Green, and Edwin D. Hicks, the defendant appearing by its attorneys, Erskine Wood and Lofton L. Tatum, a jury having been duly impaneled and sworn to try said cause did hear the opening statements of the respective counsel, the testimony produced on behalf of the plaintiff and the testimony produced on behalf of the defendant, whereupon the jury, having heard the closing arguments of respective counsel and having been instructed by the Court as to the law, and the Court having submitted upon request of plaintiff a special interrogatory to be answered by the jury, the jury did thereupon retire for its deliberation upon the 17th day of May, 1944, and upon said 17th day of May, 1944, did [fol. 20] return its answer to said special interrogatory, submitted as aforesaid, and did return its verdict in favor of the plaintiff, Cecil I. Hust, and against the defendant, Moore-McCormack Lines, Inc., a corporation, which said answer to said interrogatory and said verdict were received by the Court and are now on file with the clerk of the above entitled Court as a part of the records in this cause, said

answer to said special interrogatory and said verdict being in words and figures as follows:

> We, the jury, impaneled and sworn to try the above-entitled cause, do answer the Interrogatory submitted to us by the Court as follows:
>
> Interrogatory: Was the plaintiff, Cecil I. Hust, at the time he sustained his injuries, on the 17th day of March, 1943, an employee of Moore-McCormack Lines, Inc., a corporation?
>
> Answer: (Yes, or No) Yes.
>
> (Signed) Victor J. Dyck, Foreman.

> We, the jury, duly impaneled and sworn to try the above entitled civil action, do find our verdict as follows:
>
> We find that Cecil I. Hust, the plaintiff herein, was an employee of Moore-McCormack Lines, Inc., a corporation, defendant herein, on the 17th day of March, 1943, and that the said plaintiff sustained injuries in the course of his employment with said defendant company on the said 17th day of March, 1943.
>
> We do further find our verdict in favor of the plaintiff, Cecil I. Hust, and against the defendant, Moore-McCormack Lines, Inc., a corporation, and assess plaintiff's damages in the sum of $35,000.00.
>
> Dated this 17th day of May, 1944.
>
> (Signed) Victor J. Dyck, Foreman.

Now therefore, based upon said verdict, the Court does hereby enter its judgment herein in favor of the plaintiff, [fol. 21] Cecil I. Hust, and against the defendant, Moore-McCormack Lines, Inc., a corporation, for the full sum of Thirty-five Thousand ($35,000.00) Dollars, with interest thereon at the rate of 6% per annum from the date of the entry of this judgment, and for costs in the sum of $——, to be taxed, with interest thereon at the rate of 6% per annum from the date of the entry of this judgment, and that execution issue therefor.

Dated at Portland, Oregon, this 18 day of May, 1944.

Martin W. Hawkins, Judge.

[fol. 22] [File endorsement omitted]

IN THE CIRCUIT COURT OF MULTNOMAH COUNTY

[Title omitted]

MOTION FOR A JUDGMENT NON OBSTANTE VEREDICTO—Filed May 20, 1944

Comes now the defendant, Moore McCormack Lines, Inc., a corporation, and moves for judgment in its favor notwithstanding the verdict rendered by the jury in the trial of this cause, and notwithstanding said verdict, moves that judgment be entered that plaintiff take nothing, and that defendant recover of and from plaintiff its costs and disbursements.

Dated this 18th day of May, 1944.

Wood, Matthiessen & Wood, Erskine Wood and Lofton L. Tatum, Attorneys for Defendant.

The ground of this motion is that a verdict for defendant should have been directed at the trial for the reasons then stated, and as then requested.

Wood, Matthiessen & Wood, Erskine Wood and Lofton L. Tatum, Attorneys for Defendant.

I hereby certify that the foregoing motion or demurrer is, in my opinion, well founded in law.

Lofton L. Tatum, of attorneys for defendant.

Service of the foregoing, by receipt of a duly certified copy thereof, in Multnomah County, Oregon, on this 20 day of May 1944, is hereby admitted.

Edwin D. Hicks, by E. Gaynean, of attorneys for Plaintiff.

[fol. 23] IN THE CIRCUIT COURT OF MULTNOMAH COUNTY

[Title omitted]

NOTICE OF APPEAL—Filed July 12, 1944

To Cecil I. Hust and Green and Landye, B. A. Green and Edwin D. Hicks, his attorneys:

You, and each of you, are hereby notified that in the above entitled cause of Cecil I. Hust, Plaintiff vs. Moore-Mc-

Cormack Lines, Inc., a corporation, Defendant, in the Circuit Court of the State of Oregon for the County of Multnomah an appeal is taken by defendant, Moore-McCormack Lines, Inc., to the Supreme Court of the State of Oregon from the Judgment for Thirty-five Thousand Dollars ($35,000), with interest and costs, in favor of plaintiff and against defendant, entered in this court and cause the 18th day of May, 1944; and, also from the order denying defendant's motion for a new trial entered in this court and cause the 6th day of July, 1944.

Dated July 12th, 1944.

Wood Matthiessen & Wood; Erskine Wood & Lofton L. Tatum, Attorneys for Defendant.

[fol. 24] Service of the foregoing notice accepted this 12th day of July, 1944.

Green & Landye, by B. A. Green; Edwin D. Hicks, Attorneys for Plaintiff.

[fols. 25-26] Bond on Appeal filed July 14, 1944, omitted in printing.

[fol. 27] IN SUPREME COURT OF OREGON

APPELLANT'S ASSIGNMENTS OF ERROR
(Page 10 Appellant's Brief)

First Assignment of Error

The Court erred in denying defendant's motion for a directed verdict; and in refusing defendant's requested instruction to the same effect; and in not entering a judgment notwithstanding the verdict.

Second Assignment of Error

This assignment is the same as the First, i. e., the Court erred in not directing a verdict for defendant, etc.; but it rests on a different ground, to-wit, there was no evidence connecting defendant with the cause of the injury.

Third Assignment of Error

The Court erred in failing to order a new trial or require plaintiff to file a remittitur on the ground that the verdict for $35,000.00 was excessive.

[fol. 28] IN THE SUPREME COURT OF OREGON

CECIL I. HUST, Respondent,

v.

MOORE-McCORMACK LINES, INC., a Corporation, Appellant

Appeal from the Circuit Court for Multnomah County.

Honorable Martin W. Hawkins, Judge.

Argued and submitted March 6, 1945.

Erskine Wood, of Portland, (with Wood, Matthiessen & Wood and Lofton L. Tatum, of Portland, on brief) for Appellant.

Edwin D. Hicks, of Portland, (with Green & Landye and B. A. Green, of Portland, on brief) for Respondent.

Before Belt, Chief Justice, and Rossman, Kelley, Bailey, Lusk, Brand and Hay, Justices.

LUSK, J.

Reversed.

OPINION

[fol. 29] LUSK, J.

The plaintiff was injured on March 9, 1943, while discharging his duties as a seaman on the S. S. Mark Hanna, a "liberty ship" owned by the United States, for which the defendant Moore-McCormack Lines, Inc., was general agent under a "service agreement" designated GAA 4-4-42. The defendant is a Delaware corporation with offices in Portland, Oregon. The accident occurred after the vessel had been torpedoed in the Atlantic Ocean and was being towed to port. The plaintiff was ordered to go to the ship's locker in the forepeak and bring out a mooring line. While crossing the locker room in search of the rope he fell

through an uncovered hatch to a lower deck. He brought this action for damages under § 33 of the Merchant Marine, or Jones Act, 41 Stat. 1007, 46 U. S. C. A. § 688, alleging that at the time of the accident the defendant was operating the vessel and he was in the defendant's employ, and that his injury was caused by the negligence of the defendant in failing to provide any light for the locker room and compelling him to carry on his work in total darkness and in failing to maintain the guard chain around the hatch through which he fell. The case was tried to a jury which brought in a verdict for the plaintiff for $35,000.00.

On the trial the defendant moved for a directed verdict on the grounds that the evidence showed that the plaintiff was not employed by it and that his injury was not caused by its negligence. The court denied the motion, and in its charge left it to the jury to determine as a question of fact whether the relation of employer and employee existed between defendant and plaintiff. The court likewise denied a motion for judgment for the defendant notwithstanding the verdict. On this appeal these rulings are assigned as error.

The rights and remedies afforded by the Jones Act are not available to the plaintiff unless he was in the employ of the defendant at the time he was injured. Nolan v. General Seafoods Corp., 112 F. (2d) 515, 517; The Norland, 101 F. [fol. 30] (2d) 967, 971. The defendant contends that the plaintiff was not its employee; that, under the terms of the service agreement, it had no authority over the hiring of the crew further than to procure the master, who was the agent and employee of the United States, and to make available to the master, officers and men, for engagement by him on behalf of the United States; and that, in fact, at the time of the accident it did not operate or have control of the vessel.

The agreement, dated October 19, 1941, is between the United States, acting by and through the administrator, War Shipping Administration, and Moore-McCormack Lines, Inc., therein referred to as the general agent. By its terms the United States appoints the defendant as its agent and not as an independent contractor, "to manage and conduct the business of vessels assigned to it by the United States from time to time", and the agent accepts the appointment and undertakes so to manage and conduct the business for the United States under the latter's direction

of such vessels as may have been or may be by the United States assigned to and accepted by the general agent for that purpose.

By Article 3A the agent agrees to (a) "Maintain the vessels in such trade or service as the United States may direct, subject to its orders as to voyages * * *"; (b) "Collect all moneys due the United States under this Agreement and deposit, remit, or disburse the same * * *"; and to (c) "Equip, victual, supply and maintain the vessels, subject to such directions, orders, regulations and methods of supervision and inspection as the United States may from time to time prescribe".

Article 3A (d) is as follows:

> "The General Agent shall procure the Master of the vessels operated hereunder, subject to the approval of the United States. The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with [fol. 31] respect to the navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. Such officers and men shall be procured by the General Agent through the usual channels and in accordance with the customary practices of commercial operators and upon the terms and conditions prevailing in the particular service or services in which the vessels are to be operated from time to time. The officers and members of the crew shall be subject only to the orders of the Master. All such persons shall be paid in the customary manner with funds provided by the United States hereunder."

Article 5. "At least once a month the United States shall pay to the General Agent as full compensation for the General Agent's services hereunder, such fair and reasonable amount as the Administrator, War Shipping Administration, shall from time to time determine * * *."

By Article 7 the United States agrees, with certain exceptions, to reimburse the General Agent "for all expenditures of every kind made by it in performing, procuring or supplying the services, facilities, stores, supplies or equip-

ment as required hereunder", and "to the extent not recovered from insurance" to "reimburse the General Agent for all crew expenditures * * * including * * * all disbursements for or on account of wages, extra compensation, overtime, bonuses, penalties, subsistence, repatriation, travel expense, loss of personal effects, maintenance, cure, vacation allowances, damages or compensation for death or personal injury or illness * * *."

Article 8. "The United States shall, without cost or expense to the General Agent, procure or provide insurance against all insurable risks of whatsoever nature or kind relating to the vessels assigned hereunder (which insurance shall include the General Agent and the vessel personnel as assureds) including, but without limitation, marine, war and P. & I. risks, and all other risks or liabilities for breach of statute and for damage caused to other vessels, persons or property, and shall defend, indemnify and save harmless the General Agent against and from any and all loss, liability, damage and expense (including costs of court and reasonable attorneys' fees) on account of such risks and liabilities, to the extent not covered or not fully covered by insurance. The General Agent shall furnish reports and information and comply fully with all instructions that may be issued with regard to all salvage claims, damages, losses or other claims * * *."

[fol. 32] Article 14. "The General Agent shall, unless otherwise instructed, subject to such regulations, instructions, or methods of supervision and inspection as may be required or prescribed by the United States, arrange for the repair of the vessels, covering hull, machinery, boilers, tackle, apparel, furniture, equipment, and spare parts, and including maintenance and voyage repairs and replacements for the account of the United States, as may be necessary to maintain the vessels in a thoroughly efficient state of repair and condition. The General Agent shall exercise reasonable diligence in making inspections and obtaining information with respect to the state of repair and condition of the vessels, and so advise the United States from time to time, in order that the United States may satisfy itself that the vessels are being properly maintained, and

shall cooperate with representatives of the United States in making any inspections or investigations that the United States may deem desirable."

Article 16. (a) "The United States shall indemnify and hold harmless and defend the General Agent against any and all claims and demands * * * of whatsoever kind or nature and by whomsoever asserted for injury to persons or property arising out of or in any way connected with the operation or use of said vessels or the performance by the General Agent of any of its obligations hereunder * * *."

There is no evidence that the defendant did anything in connection with the business of the vessel not contemplated by the terms of the service agreement, or that it exercised or attempted to exercise any control over the master or crew. Indeed, the uncontradicted evidence is that when it was the duty of the defendant to assist in the loading of the vessel it acted under the instructions of the master as to the time, place and method of loading. And, although under the service agreement the defendant might have been required to arrange for the repair of the vessel, it never did so, but this duty was discharged by a division of the War Shipping Administration.

In accordance with the terms of the service agreement, and as well of collective bargaining agreements between the defendant and the various maritime unions, the crew were procured by the defendant's Portland office through the union hiring halls. The men were sent to the vessel and accepted or rejected by the master, and those who were ac- [fol. 33] cepted signed the shipping articles which constitute the contract between the master and the seaman. The articles on their face designate War Shipping Administration, Washington, D. C., as owner of the Mark Hanna and Moore-McCormack Lines, Inc., 5 Broadway, New York, New York, as general agents. The articles are signed as well by a deputy shipping commissioner, who did not testify. But the United States shipping commissioner at Portland, Commander Jones, testified that the regular practice and requirement is for the shipping commissioner or his deputy, who presides over the signing of shipping articles, to read them aloud to the crew.

We think it must be assumed in determining whether the plaintiff was an employee of the defendant that the case is governed by the rule of the common law. There has been no suggestion to the contrary, except the plaintiff's contention that the Act of Congress (Public Law 17—78th Congress) 50 U. S. C. A. Append., § 1291, and known as the War Shipping Administration (Clarification) Act of March 24, 1943, is controlling. Of that we shall speak later. The familiar and well established test of whether one is an employee of another is whether the latter has the right to order, direct and control the former in the performance of the work, and the elements to be considered on that question are the selection and engagement of the servant, the payment of wages, and the power of dismissal. 35 Am. Jur., Master and Servant, 445, 446, § 3. See, Journal Publishing Co. v. State Unemployment Compensation Commission, —— Or. ——, 155 F. (2d) 570, 585. By the terms of the service agreement the defendant was authorized, not to employ, but to procure the master, and it is expressly provided that the master "shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel." The defendant was further authorized to "procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel.". Master, officers and men were to be "paid in the customary manner with funds [fol. 34] provided by the United States hereunder." This language requires no emendation. It speaks plainly of the intention of the United States to reserve to itself complete control of the vessel's crew through its agent and employee, the master. No room is left for the motion that the defendant had authority to discharge the master or any officer or member of the crew. But the plaintiff argues that the language does not imply an exclusive agency, that "one employee may serve many masters at the same time." The latter statement is doubtless true. Where there are several owners of a vessel, for example, the master may be agent for all. But here, of course, is no question of dual ownership, and we think the language employed does not admit of the construction that the master is subject to the control of any one else than the United States. And, since the crew "shall be subject only to the orders of the Master," their

status as employees of the United States, and of no one else, necessarily follows.

Counsel for the parties have cited no cases, and we have found none, in which the courts have interpreted a stipulation such as that we are now considering in an agreement of this character. But in cases involving charter parties, where the question is whether there has been a demise of the vessel or a mere contract of affreightment, the courts hold that provisions designating the master and mariners as servants of the owner are inconsistent with a construction of the charter party as a demise of the vessel, with resulting right of control and navigation in the charterer rather than the owner. Pacific Improvement Co. v. Schubach-Hamilton S. S. Co., 214 F. 854; Warner Quinlan Asphalt Co. v. The King. (1924) Can. S. C. 236, (1924) 2 D. L. R. 853; Adams v. Homeyer, 45 Mo. 545, 100 Am. Dec. 391; Deniff v. Charles R. McCormick & Co., 105 Or. 697, 705, 210 P. 703; Multnomah Co. v. Willamette Towing Co., 49 Or. 204, 215, 89 P. 369; Grimberg v. Columbia Packers' Assoc., 47 Or. 257, 270, 83 P. 194; 58 C. J., Shipping, 159, § 226. [fol. 35] While it is true that in construing charter parties the presumption is against a demise of the vessel, we think that the analogy of these cases is manifest, and that, if in a charter party a provision to the effect that the master and crew are to be employees of the owner of the vessel means that they are not the employees of the charterer, no different effect should be given to a like provision in the agreement here. To hold otherwise would be, in our opinion, to ignore the clearly expressed intention of the parties that there should not be a divided control of the vessel, its master and crew. The agreement was made in time of war; the vessels operated under it were and still are, as we judicially know, practically in the military service of the United States; and it is not to be supposed that in those circumstances the War Shipping Administration contemplated anything less than that they should be under the complete and exclusive control of the United States.

To support their contention counsel for the plaintiff point to the following provisions in the service agreement: Article 2. The defendant agrees as "General Agent * * * to manage and conduct the business (of the vessels) for the United States, in accordance with such directions, orders, or regulations as the latter has prescribed, or from time to time may prescribe * * *." Article 3A (c). The de-

fendant agrees "to equip, victual, supply and maintain the vessels." Article 14. The defendant agrees "unless otherwise instructed," to "arrange for the repair of the vessels, covering hull, machinery, boilers, tackle, apparel, furniture, equipment, and spare parts and including maintenance and voyage repairs and replacements, for the account of the United States, as may be necessary to maintain the vessels in a thoroughly efficient state of repair and condition," and to "exercise reasonable diligence in making inspections and obtaining information with respect to the state of repair and condition of the vessels, and so advise the United States [fol. 36] from time to time, in order that the United States may satisfy itself that the vessels are being properly maintained * * *."

It is argued that when the plaintiff, in obedience to the boatswain's order, went to the locker room to get a mooring line to be used in place of the one that had broken he was aiding in making a replacement and thus performing a duty of the defendant under Article 14 of the agreement.

We think that this is not an admissible deduction. In the first place a significant difference is to be noted between Article 3A (c) and the similar provision in the contract involved in Brady v. Roosevelt S. S. Co., 317 U. S. 575, 87 L. Ed. 471, 63 S. Ct. 425. That case is the main reliance of the plaintiff, and will be fully considered later. At this point it is sufficient to say that the Supreme Court sustained liability in an action for wrongful death against the private operator of a vessel owned by the United States Maritime Commission. But in that case the agent agreed to "man" and "operate the vessels," while, under the agreement here, the defendant does not agree to do either. Again in the Brady case the agreement with respect to repairs was that the agent should "exercise reasonable care and diligence to maintain the vessels in a thoroughly efficient state of repair, etc.", while, under the agreement in the present case, the agent was required to "arrange for the repair of the vessels," etc. Referring to the Brady case and to Quinn v. Southgate Nelson Corp., 121 F. (2d) 190, Judge Knox, of the District Court, S. D. N. Y., in the case of Lewis v. U. S. Nav. Co., Inc., 57 F. Supp. 652, said: "In each of these cases the agent was required not only to victual, supply and manage the vessel, but to man it as well." He observed that the difference between the agreements in those cases and the agreement in the case before him (which ap-

pears to have been identical with the one here under consideration) was intentional, and said: "Unless, therefore, the plaintiff was unaware that defendant, in servicing the [fol. 37] ship, was acting as an agent of the United States and was without any authority over the vessel once she was on her way abroad, and thus has a right of action by reason of defendant's failure to disclose its principal, I hardly see how he can recover." The court found that such disclosure had not been made, and for that reason that the defendant agent was liable.

The intention of the parties to the agreement must be derived from a consideration of its terms as a whole. Grimberg v. Columbia Packers' Assoc., supra; Warner Quinlan Asphalt Co. v. The King, supra. But, to give the language pointed to by the plaintiff the effect claimed for it, would be to ignore other provisions and nullify them. The construction insisted upon is wholly inconsistent with Article 3A (d), and, in view of that subdivision, the only conclusion consistent with fundamental principles governing the interpretation of contracts is that the duties stipulated for in those sections relied on by the plaintiff were only such as could be performed by the defendant while the vessel is in port. The defendant did not engage to arrange for repairs and replacements when the vessel was on the ocean, for it had no servants or employees on the vessel to do this work. Its agreement "to equip, victual and supply" the vessel had no connection with its control and navigation, and does not suggest any right of control over the master and crew; while the word "maintain" in the same phrase no doubt should bear the meaning which it has in the context of Article 3A (a) where it is provided that the agent shall "maintain the vessels in such trade or service as the United States may direct, subject to its orders as to voyages, cargoes, etc." Much plainer and more explicit language indicating control of the vessel in the charterers is found in Pacific Improvement Co. v. Schubach-Hamilton S. S. Co., supra, but Judge Cushman, in view of other provisions, said concerning them:

> [fol. 38] "These provisions, so far as orders, directions, instructions, and control upon the part of the charterer are concerned contemplate such orders as the charterer sees fit to give in the matter of cargo, fuel, loading, unloading, the time of departure from ports,

the ports to be made, the order in which made, the wharves, or means to be used in loading or unloading, and similar directions concerning the voyage, and were, evidently, the only ones in contemplation."

Going beyond the terms of the agreement, the plaintiff contends that certain evidence in the record indicates the existence of an employer-employee relationship between the plaintiff and the defendant. This contention will now be considered.

(1) The defendant, in paying the crew of the vessel on behalf of the United States, used pay envelopes on which its own name was printed. The local manager of the defendant explained in his testimony that the envelopes were used as a matter of economy because they were on hand.

(2) The plaintiff was provided with a "crew-pass and muster card", on a printed form bearing the name of the defendant, but signed, apparently, by the chief mate of the vessel. It does not appear how the chief mate got possession of the crew-pass form, but, even though we should infer that the defendant permitted him to take it, there is nothing to show that its issuance was the act of the defendant.

(3) The defendant issued to a member of the crew a printed United States treasury form containing a statement of income tax withheld on the seaman's wages in which the defendant's name appears in print under the words "employer by whom paid". Under the terms of the service agreement the defendant was required to and did pay the crew their wages (being later reimbursed by the United States). For the purpose of the withholding tax the defendant is deemed an employer under the Internal Revenue Code of the United States (Internal Revenue Code § 1621, 26 U. S. C. A., § 1621).

(4) There was received in evidence a letter written by the local manager of the defendant to the plaintiff enclos- [fol. 39] ing copies of two other letters. One of these was from the acting assistant general counsel of the War Shipping Administration and was addressed to the defendant at its San Francisco office. The letter discusses the plaintiff's claim, expresses the opinion that his disability is not "compensable under the War Shipping Administration Crew Life and Injury Policy", and that it "is clearly a marine

risk and that, therefore, it is a matter to be taken up by you with your marine P. & I. underwriters." The other letter was written by H. W. Dubbin, claim agent of the defendant at San Francisco, to Mr. Tripp, its Portland manager, and says, among other things, in referring to the letter of the acting assistant general counsel of the War Shipping Administration: "This decision is somewhat questionable, nevertheless we will probably have to submit file to the Fulton Underwriting Agency." Before introducing this correspondence in evidence counsel for the plaintiff developed on the cross-examination of Mr. Tripp that the plaintiff had presented his claim to him and that he had referred the claim to Dubbin. The plaintiff argues that this evidence shows that the defendant considered the claim its own obligation, and in that connection calls attention to Article 16 (a) of the service agreement in which the United States agrees to indemnify the general agent against claims asserted for injury to persons or property arising out of the operation of the vessels. In our opinion the inference sought to be drawn is unwarranted. It is in no sense an admission of liability for an employee of a corporation to whom a claim is presented to refer the matter to another employee whose duty requires him to deal with claims. Nor did the defendant indicate that it deemed itself liable when it in turn, through its claim agent, referred the claim to the War Shipping Administration and later, on the latter's instruction, to its "marine P. & I. underwriters." By Article 8 of the service agreement the United States agreed to provide, without cost to the general agent, insurance [fol. 40] against all insurable risks, including P. & I. risks, relating to the vessels (the general agent to be among the assured). The article then provides: "The General Agent shall furnish reports and information and comply fully with all instructions that may be issued with regard to all salvage claims, damages, losses or other claims." It was therefore the duty of the defendant under its contract to refer the claim to its P. & I. underwriters in accordance with the instructions contained in the letter from the acting assistant general counsel of the War Shipping Administration.

There were received in evidence copies of collective bargaining agreements between the several maritime unions and various steamship companies, including the defendant, and copies of a "Statement of Policy" executed by union officials and the War Shipping Administration, together

with a copy of a regulation of the War Shipping Administration instructing all general agents to follow the policy outlined. The statement of policy to which the plaintiff's union (Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association) is a party is dated May 4, 1942, several months before the plaintiff signed shipping articles for the voyage on which he was injured. It sets forth Article 3 (d) of the service agreement, and declares that the intention of the clause is that the general agent will procure and make available to the master for engagement by the master officers and men through channels which the agent has heretofore used for his own merchant ships, for example, through union hiring halls if the general agent has contracts so providing. It is agreed that the existing collective bargaining agreements be frozen for the duration of the war. It is agreed that, in view of the need of the highest standard of order and discipline aboard ship in wartime the unions will cooperate with the War Shipping Administration in maintaining the authority of the master and eliminating crews' mass meetings, crews' committees, [fol. 41] and other similar meetings or groups; that disputes will be settled through the regular machinery in existence under the collective bargaining agreements between the unions and the steamship operators; and that the unions' right to strike will be withheld for the duration of the war. Another such statement of policy, dated May 4, 1942, with other unions, is of like tenor, with the exception that it is provided that the existing collective bargaining agreements be continued "unless changed by mutual agreement between the War Shipping Administration and the union". A third such statement of policy, dated May 12, 1942, between the National Maritime Union of America and the War Shipping Administration contains a like provision for modification of collective bargaining agreements. There was also received in evidence a letter dated May 8, 1942, signed by Edward Macauley, assistant to the administrator, War Shipping Administration, and addressed to Mr. Joseph Curran, president National Maritime Union of America, in response to a letter from Mr. Curran, and giving answers to a list of questions which Mr. Curran had submitted with reference mainly to the effect of the statement of policy on certain union practices and policies.

This evidence, in our opinion, constitutes recognition by the unions of the status as United States employees of sea-

men on vessels owned by the United States. The stipulation of Article 3(d) of the service agreement that "the Master shall be an agent and employee of the United States" was as effectually brought home to the plaintiff through his duly authorized representatives, the officials of his union, as though he had signed the statement of policy himself. There is implied approval of this stipulation. The union agreed with the War Shipping Administration to a change in the provisions of the collective bargaining agreements fixing their duration and to restrictions on the activities of the crews at sea not contained in those agreements. It cannot be said that in this matter the War Shipping Ad- [fol. 42] ministration was acting on behalf of the steamship companies. It was the other way around. The War Shipping Administration was the principal, the companies the agents; and, in effect, the War Shipping Administration took over the collective bargaining agreements, substituted itself as a party in the place of the steamship companies, and the unions acquiesced. House Report 107, which accompanied Public Law 17, 78th Congress, speaks of "the adoption of the collective bargaining agreements" by the Administrator (1943 A. M. C. 618).

As stated, the trial judge left to the jury the question of employer-employee relationship as one of fact. The propriety of that submission is not defended here, and it seems to be agreed by both parties that the question is one of law to be determined by the court. Of the correctness of this view we think there can be no doubt. The construction and effect of the service agreement are, of course, for the court. There is no issue of *de facto* control, and we think that nothing in the evidence affects the conclusion that under the service agreement the defendant was not authorized to employ the master or crew of the vessel or to exercise any authority over them or to assume any control over the vessel itself while at sea.

Plaintiff's reliance on Brady v. Roosevelt S. S. Co., supra, is in our opinion, not warranted. That case did not present the question whether a seaman was an employee of the defendant steamship company. It was not brought under the Jones Act, but was an action to recover damages for the death of a customs inspector resulting from injuries sustained while boarding a vessel owned by the United States Maritime Commission and operated for it under a contract covering that and other vessels. The accident

occurred in June, 1938, and was caused by the breaking of a rung of the ladder which the deceased was climbing. At the time of the injury the vessel was docked at a pier in New York City. Suit was brought in the New York Supreme Court and removed to the federal court.

We have already called attention to important differences in the contracts involved in the two cases, and to these we [fol. 43] should add that, so far as appears, the contract in the Brady case contains no provisions similar to those of Article 3A (d) of the service agreement here. There was no contention that the seamen on the vessel were employees of the United States. Apart from that, the questions for decision were totally different. This case turns on the defendant's contention that the plaintiff was not in its employ and that it did not commit the tort which caused the plaintiff's injury. In the Brady case the tort was assumed to be that of the defendant, and that matter was not an issue before the Supreme Court. The only question decided was upon the validity of the defendant's contention that the plaintiff's remedy was not against it, but against the United States or the Maritime Commission by libel *in personam*, because the Suits in Admiralty Act (41 Stat. 525, 46 U. S. C. §§ 741, 742) so provided, and because, as the defendant claimed, the Maritime Commission, under the terms of its contract with the agent, would ultimately have to pay the judgment and was therefore the real party in interest. The Circuit Court of Appeals had taken that view, relying on Emergency Fleet Corp. v. Lustgarten, 280 U. S. 320, 74 L. ed. 451, 50 S. Ct. 118, and ordered the complaint dismissed, 128 F. (2d) 169. But, on certiorari, the Supreme Court, in an opinion by Mr. Justice Douglas, reversed. The Lustgarten case was overruled, "so far as it would prevent a private operator from being sued under the circumstances of this case". The court said that "the agent, because he is agent, does not cease to be answerable for his torts", and that Congress did not intend, by passing the Suits in Admiralty Act, to withdraw the right to sue the agent for his torts. It was further held that, even assuming the existence of the asserted agreement for exoneration, if the plaintiff had a cause of action against the defendant "it is difficult to see how she could be deprived of it by reason of a contract" between defendant and the Maritime Commission. "The question", the [fol. 44] court said in distinguishing other cases, "is not

whether the Commission had authority to delegate to respondent responsibilities for managing and operating the vessel as its agent. It is whether respondent can escape liability for a negligent exercise of that delegated power if we assume that by contract it will be exonerated or indemnified for any damages it must pay."

It is apparent, therefore, that the Brady case does not touch the question with which we are here dealing and does not control our decision.

Before discussing decisions of the lower courts, we think it well to consider Public Law 17, 78th Congress, which, as we have said, the plaintiff asserts is controlling. Section 1 of the Act provides in part:

> "That (a) officers and members of crews (hereinafter referred to as 'seamen') employed on United States or foreign flag vessels as employees of the United States through the War Shipping Administration shall, with respect to (1) laws administered by the Public Health Service and the Social Security Act, as amended by subsection (b) (2) and (3) of this section; (2) death, injuries, illness, maintenance and cure, loss of effects, detention, or reparation, or claims arising therefrom not covered by the foregoing clause (1); and (3) collection of wages and bonuses and making of allotments, have all of the rights, benefits, exemptions, privileges, and liabilities, under law applicable to citizens of the United States employed as seamen on privately owned and operated American vessels. * * *
>
> "Any claim referred to in clause (2) or (3) hereof shall, if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act, notwithstanding the vessel on which the seaman is employed is not a merchant vessel within the meaning of such Act. * * *
>
> "When used in this subsection the term 'administratively disallowed' means a denial of a written claim in accordance with rules or regulations prescribed by the Administrator, War Shipping Administration."

[fol. 45] It may first be observed that the fact that Congress considered it advisable to pass remedial legislation of this kind is itself an argument against the plaintiff's position that seamen "employed upon United States or foreign flag vessels as employees of the United

States through the War Shipping Administration" are also employees of general agents operating under Service Agreement GAA 4-4-42; for, if that be true, no legislation was necessary in order to enable such seamen to sue the agent for its torts, since they already had that right under the Jones Act. That is a conclusion which may safely be drawn from the decision in the Brady case, which was decided before Public Law 17 was passed, and was brought to the attention of the Congress in the report of the committee which accompanied the bill. House Report 107, 1943 A. M. C. 611.

It is our opinion, however, that it was not the purpose of Public Law 17 to give a remedy against steamship companies who are agents of the War Shipping Administration. Section 1 does not mention agents. The rights which it declares that seamen in the employ of the United States shall have are the rights "applicable to citizens of the United States employed as seamen on privately owned and operated American vessels." What are those rights under the Jones Act? Broadly speaking, they consist in the right of the seaman or his personal representative to sue the employer for negligence causing injury or death. But, since the agent under the service agreement in question is not the seaman's employer, and, since, indeed, the very law upon which the plaintiff relies deals in express terms with employees of the United States, it follows that the Act was not intended to create or declare rights or remedies against the agent. On the other hand, since the seamen are employees of the United States and are accorded by the Act the same rights they would have if privately employed, the clear purpose of Section 1 is to enable them to enforce rights given by the Jones Act against their em- [fol. 46] ployer, the United States, or the War Shipping Administration, "pursuant to the provisions of the Suits in Admiralty Act." If it be said that this right already exists it may be answered that this is true only if a vessel is a merchant vessel or a tug boat (46 U. S. C. A. § 742), and at least one of the purposes of Public Law 17 was to remove "confusion and inequities" resulting from this state of the law and other conditions. House Report 107, 1943 A. M. C. 617. This is made clear in the following passage from the House Report (1943 A. M. C. p. 616):

> "Seamen employed as Government employees on vessels owned by or bareboat-chartered to the War Ship-

ping Administration are sometimes precluded from enforcing against the United States the rights and benefits in case of death, injury, illness, detention, and so on that would be available to them if employed by private employers, except under the Suits in Admiralty Act. If they were private employees, rights to redress for death, injury, or illness could be prosecuted under the Jones Act and the general maritime law. These same rights may be asserted against the United States as the employer under the Suits in Admiralty Act providing the vessel involved is a merchant vessel. In case of public vessels the seamen must rely upon the Administrator's policy for compensation recognizing contractual liability which this legislation recognizes. Present-day operating conditions often make uncertain whether the vessel is a merchant or a public vessel. As a consequence the aforementioned rights of such seamen are frequently in doubt. In addition to these rights which, at times, are uncertain for the reasons mentioned, the seamen who are employees of the United States probably have rights under the United States Employees' Compensation Act in the event of injury or death. Such compensation benefits are not presently enjoyed by seamen under private employment. Thus vital differences in these rights are made to depend upon whether the seaman happens to be employed aboard a vessel time-chartered to the War Shipping Administration or owned by or bareboat-chartered to the War Shipping Administration. Since seamen constantly change from one vessel to another, their rights for death, injury, or illness also constantly change, depending upon the relationship of the War Shipping Administration to the vessel. This fluctuation and lack of uniformity of rights leads to dependency of vital rights upon chance with a result of confusion and inequities. The bill is designed to remove this confusion and these inequities."

[fol. 47] Other statements in the report leave the intention of Congress free from doubt. We quote from the report, the references being to 1943 A. M. C.:

"They (the seamen) will continue to have the right of indemnity through court action for injury resulting from unseaworthiness of the vessel or defects in vessel

appliances, and they (and their dependents) will have the right to action under the Jones Act (1920) for injury or death resulting from negligence of the employer. Such seamen will have the right to enforce claims for these benefits according to the procedure of the Suits in Admiralty Act" (p. 606).

"They are not to be covered under the United States Employees' Compensation Act because they and their dependents have the right to sue for indemnity or damages under the Jones Act in case of death or injury" (p. 607).

"Except in rare cases the ships themselves are being operated as merchant vessels, and are therefore subject to the Suits in Admiralty Act. Granting seamen rights to sue under that act is therefore entirely consistent with the underlying pattern of the measure" (p. 607).

"Under section 1 officers and members of crews employed on vessels by or on behalf of the United States through the War Shipping Administration are, for the purpose of determination of the rights and benefits of such seamen and their dependents or beneficiaries, referred to those provisions of statutory and general maritime law which are applicable to seamen in private employment" (p. 621).

"The various rights and remedies under statute and general maritime law with respect to death, injury, illness, and other casualty to seamen, have been rather fully set forth hereinabove. Under clause 2 of section 1 (a) these substantive rights would be governed by existing law relating to privately employed seamen. *The only modification thereof* arises from the remedial provision that they shall be enforced in accordance with the provisions of the Suits in Admiralty Act. *This procedure is appropriate in view of the fact that the suits will be against the Government of the United States*" (p. 623; italics added).

Counsel for the plaintiff call attention to other passages from the report which are claimed to support their construction of the Act. Considered apart from the context, some of [fol. 48] the language used seems to carry that interpretation. But, when the report is read in its entirety, and, in view of the repeated statements of the committee, as well as

the express provision of Section 1 itself, that the rights granted are to be enforced according to the Suits in Admiralty Act, a different conclusion is compelled. We will consider, for example, a portion of the report (1943 A. M. C. 620) quoted in the brief of plaintiff, with emphasis upon the following sentence:

> "All of these rights for which court action lies, although maritime in nature, may be enforced either in Federal or State courts."

This is followed by a statement of the nature of the seaman's rights and remedies under the Jones Act, and the final sentence quoted by counsel reads:

> "In addition to these peacetime remedial provisions, additional benefits for war conditions are now provided to all seamen whether private or Government employees under the decisions of the Maritime War Emergency Board."

We think that counsel's reliance on this language arises from the failure to take note of the particular phase of the subject which the committee was considering in this portion of the report. The committee was not there engaged in an interpretation or explanation of the meaning of, or objects sought to be achieved by, Section 1 of the Act. On the contrary, the language quoted by counsel is part of a discussion of the rights under existing law of a seaman *privately employed*—the right to maintenance and cure, wages, food and lodging, hospitalization, etc. This is made entirely clear by the sentence immediately preceding the language quoted in the brief. It reads:

> "A seaman *privately employed* is also entitled to indemnity for injury sustained by reason of the unseaworthiness of the ship or a defect in her appliances or equipment" (italics added).

It is apparent that in this section of the report the committee was enumerating the rights under existing law of [fol. 49] seamen in private employment (as well as certain remedial wartime policies which the War Shipping Administration had put into effect) as a background for the explanation of the purposes intended to be accomplished by the proposed legislation, which follows under the heading

"The Provisions of Section 1" (p. 621). And it is in reference to these matters that the committee used the language above quoted by us:

> "The various rights and remedies under statute and general maritime law with respect to death, injury, illness, and other casualty to seamen, have been rather fully set forth hereinabove" (p. 623).

In a word, the committee said in effect:

> "These are the rights which seamen privately employed now have. Our purpose is to give the same rights to seamen employed by the United States, to be enforced against the United States through the procedure of the Suits in Admiralty Act."

An additional reason for the view we take is the retroactive provision of Public Law 17. Congress might well by statute provide a remedy against the United States and make it available in the case of an injury occurring before the statute was enacted; but it is difficult to believe that Congress would undertake to create a retroactive liability against private individuals or corporations. See 2 Cooley's Constitutional Limitations (8th ed.) 770; 16 C. J. S., Constitutional Law, 861, § 417. We can find no such intention expressed or implied in Section 1 of Public Law 17.

The fact that Section 1 of the Act does not deal with the liability of agents is further indicated by the following passage from the report:

> "Subsection (j) of section 3 would make it clear beyond controversy that the War Risk Insurance Act includes authority to provide insurance protection for agent operators as well as owners or charterers of vessels. The recent determination of the Supreme Court of the United States in Margaret M. Brady vs. Roosevelt Steamship Company, Inc. (1943 A. M. C. 1), holds that there is such an independent liability in certain cases." (1943 A. M. C. 611)

[fol. 50] The clear implication of the foregoing is that the committee was content to leave the matter of agents' liability to the courts.

We do not mean to suggest that the purpose of the law was to grant to agents immunity from suit for their own

torts, but simply that it leaves the question of the agents' liability untouched. It does not purport to create between the seamen and general agents of the War Shipping Administration a relationship of employer and employee, which, but for the Act, would not exist, nor to impose upon such agents liability for a tort which they did not commit. The whole purpose and intent of Section 1, in our opinion, was to create and declare in favor of seamen employed by the United States rights and remedies against the United States.

In addition to the Brady case, counsel for the plaintiff have cited Gay v. Pope & Talbot, Inc., 47 N. Y. S. (2d) 16, 1944 A. M. C. 855 (March 6, 1944); McCormick v. Moore-McCormack Lines, Inc., 54 F. Supp. 399, 1943 A. M. C. 1422, D. C. E. D. Pa.; Schaller v. Matson Navigation Co., 43 N. Y. S. (2d) 566, City Ct. of N. Y., Special Term; and Lewis v. N. S. Nav. Co., supra.

The Gay case was an action by a seamen to recover damages for personal injuries under the Jones Act against a general agent operating under the same form of contract as that involved in this case. The grounds of negligence are not stated in the opinion. The case came before the court on defendant's motion to dismiss the complaint based on the claim that Public Law 17 provides an exclusive remedy against the United States. The court denied the motion, held that the remedy provided by Public Law 17 is not exclusive, and that, under the Brady case, the agent is liable for its own torts. With these conclusions we are in accord, but, for reasons already stated, we do not agree with the implication of the decision that the seaman was an employee of the agent and entitled to sue under the Jones Act.

[fol. 51] In the Shaller case there is a very brief opinion denying a motion to dismiss. The court said that "it is conceded that the defendant is the owner of the vessel upon which plaintiff was employed", and that, although the defendant "operates the vessel in behalf of the United States Government under a general agency agreement, it is subject to suit, under the Jones Act, for its torts" (citing the Brady case). The concession referred to would seem to distinguish the case.

Three cases are reported under the title, McCormick v. Moore-McCormack Lines, Inc., supra. They were actions to

recover for personal injuries, for maintenance and cure, and for War Risk Insurance benefits. On a motion for summary judgment the court held that under the Brady case the seaman had a right of action against the agent for its torts, and, in the discussion of the plaintiff's claim for maintenance and cure, said that "even under the general agency agreement the operator became owner *pro hac vice* and accordingly became subject to the same liability."

None of these cases refers to the provisions of the agency agreement that the master shall be an employee and agent of the United States, and all seem to proceed upon the theory that, because the Supreme Court has held that an agent may be liable for its own torts, notwithstanding the provisions of the Suits in Admiralty Act, every agent, irrespective of the terms of the agency agreement and of the relationship between the agent and the crew of a vessel of the United States, is liable for personal injury to a seaman sustained aboard the vessel and caused by the negligence of someone. As we have already indicated at some length, we are unable to accept this view.

We have discussed the Lewis case. The special ground on which the court sustained liability there is not present here, and the opinion of the court indicates that, but for the element of undisclosed agency, a different decision would have been rendered.

[fol. 52] We should also mention Carroll v. United States, 133 F. (2d) 690, C. C. A. 2d, decided February 9, 1943, after the decision in the Brady case. This was a libel in the United States District Court by a seaman against the United States and The Waterman S. S. Agency, Ltd., for personal injuries suffered by the libellant while a steward on board the S. S. "Gallant Fox", owned by the United States and operated by the agency under the Panamanian flag. The accident occurred December 4, 1941. The libel was filed under the Suits in Admiralty Act, also under the Jones Act and general maritime law. The opinion shows that the contract between the United States and the agent was not before the court. The court held that since the decision in the Brady case the libellant could sue the agency under the Jones Act. The questions involved in the instant case were not discussed and do not appear to have been involved.

See, also, Burkholder v. United States, 56 F. Supp. 106, 1944 A. M. C. 944, D. C. E. D. Penn. (June 9, 1944), a libel in personam against the United States and the agent, the

owner of the vessel, which was chartered to the United States. The question of the agent's liability, however, was not discussed.

We turn now to decisions which sustain the defendant's position. Murray v. American Export Lines, Inc., 53 F. Supp. 861, D. C. S. D. N. Y. (December 10, 1943), holds, in a Jones Act case, that the agent is not liable for the negligence of a seaman who was a fellow servant of the plaintiff. This conclusion was reached after a consideration of the material differences between the service agreement, GAA 4-4-42, and the agency contracts involved in the Brady case and Quinn v. Southgate Nelson Corp., supra. Some of these differences we have already pointed out, but, in addition, the court (which had before it copies of the agreements in those cases) called attention to their provi- [fol. 53] sion that "any agents selected or appointed by the Managing Agent shall be solely the agents of said Managing Agent and not, in any respect, the agents of the Owner". Referring to the statement in the Brady case that "the rights of principal and agent inter se are not the measure of the rights of third persons against either of them for their torts", the court said:

> "While the last-quoted sentence is true, nevertheless the contract between principal and agent may show who is in control of the operation of the vessel, whose orders the members of the crew are required to obey and who is their employer. From all this it is possible to conclude who is liable if a member of the crew negligently injures a fellow crew member."

The court concluded:

> "Plaintiff does not claim that the injury to plaintiff was due to any defect in machinery or appliance or to any failure of defendant to inspect the vessel or to arrange for the proper maintenance of the vessel. The negligence alleged is that of a fellow member of the crew, over whom the defendant exercised no direction or control. It is clear that the negligence of the crew member, if any, is chargeable to the United States."

Pedersen v. Stockard S. S. Corp., 51 N. Y. S. (2d) 675, — App. Div. —, 1945 A. M. C. 23 (December 6, 1944), an action by a longshoreman to recover damages for personal

injury sustained while handling cargo, follows the decision in the Murray case, and holds that, if the accident happened not because of defective appliances but because of negligence of the crew, the defendant agent was not responsible.

Baker v. Moore-McCormack Lines, Inc., 57 F. Supp. 207, D. C. N. D. Cal., S. D. (September 29, 1944), is an opinion on motion to remand in a Jones Act case brought in the state court and removed to the federal court. The motion was denied because the agent was not the employer of the seaman and the prohibition against removal in the Jones Act was therefore not applicable. The court said:

> [fol. 54] "If plaintiff wishes to follow the Jones Act against his employer, the United States, he may do so under certain conditions pursuant to the provisions of the Suits in Admiralty Act, 46 U. S. C. A. § 741 et seq., and by virtue of Public Law 17, 50 U. S. C. A. Appendix § 1291, irrespective of whether the vessel is a merchant vessel or a public vessel. However, the suit against defendant Moore-McCormack Lines, Inc., cannot be under the Jones Act, inasmuch as the defendant did not man the vessel and was not plaintiff's employer."

Conlon v. Hammond Shipping Company Ltd., 55 F. Supp. 635, 1944 A. M. C. 443, D. C. N. D. Cal., S. D. (January 8, 1944), was a libel by a seaman for wages, maintenance and cure, against a general agent. The court rendered a brief opinion on exceptions to the libel, as follows:

> "Respondent, being neither the owner (nor owner *pro hac vice*) nor master of the vessel in which libellant served as seaman, is not suable in Admiralty for wages, maintenance or cure. Everett vs. United States, 284 Fed. 203. By the 'Service Agreement' between the United States, as owner, and respondent, as 'General Agent', respondent was the agent of the United States. Murray vs. American Export Lines, Inc. (S. D. N. Y.), Civil 21-401, 1943 A. M. C. 1426.
>
> "The Suits in Admiralty Act (46 U. S. C., sec. 741 et seq.), affords libellant adequate remedy against the owner of the vessel."

See, also, Militano v. United States, 55 F. Supp. 904, 1944 A. M. C. 1250, D. C. S. D. N. Y. (December 3, 1943); Neilsen

v. American President Lines, Ltd., 1944 A. M. C. 1169, S. Ct. N. Y., N. Y. County, 50 N. Y. S. (2d) 249 (August 23, 1944); Fox v. Alcoa S. S. Co., 143 F. (2d) 667, C. C. A. 5, 1944 A. M. C. 893 (July 7, 1944).

From this review of pertinent decisions it is apparent that there is no decided weight of authority on this important question, which ultimately must be determined by the Supreme Court of the United States. Those courts which would sustain liability in a case of this kind seem to us to have attached unwarranted implications to the decision in the Brady case. The opinion in that case is carefully [fol. 55] guarded, and the decision limited to the question whether a private operator may be sued "under the circumstances of this case" (317 U. S. 578). There is nothing, as we view it, to indicate that it should govern the rights of seamen in the employ of the United States on vessels owned by the United States. There may, of course, be circumstances under which the general agent for the War Shipping Administration would be liable to a seaman, or to others, as, for example, for injury resulting from negligence in failing to equip the vessel properly, or negligence in the selection of the master or a member of the crew. But that would not be because the seamen are in the employ of the agent, nor because of any general principle of liability arising from the fact of agency, but it would be because of the violation f a particular duty toward the injured person which the agent has assumed.

We find no such basis of liability in this case. The defendant was not responsible for a negligent order of the boatswain which sent the plaintiff into a place of danger. There is no evidence that the vessel was not properly equipped when it started on its voyage. It appears that the electric light bulb which usually lighted the locker room where the plaintiff was injured had burned out or been removed a short time prior to the accident, and that the guard chain used to protect the hatchway through which the plaintiff fell, had been removed a day or two before on order of the master. The defendant had no control over these events and no means of preventing their occurrence. As an agent whose duty it was merely to procure the master and crew for employment by the United States, it was not responsible for their conduct to the plaintiff (Restatement, Agency, § 79, comment a); and, since plaintiff was not an

employee of the defendant, he could in no event sue the defendant under the Jones Act.

One other contention of the plaintiff should be briefly noticed. The defendant in its answer admitted "that at the [fol. 56] time of the accident alleged it was operating the Liberty ship S. S. Mark Hanna for and on behalf of the United States of America, represented by the War Shipping Administration under a written Agency Agreement prescribing and limiting the duties, authority and functions of this defendant." This is said to be "express recognition that the crew were the agents" of the defendant. But the defendant denied allegations of the complaint that it managed or controlled the Mark Hanna and that plaintiff was employed by it. The defendant, therefore, cannot be said to have gone further than to admit operation of the vessel to the extent authorized by the agreement and to the exclusion of any control of the vessel or authority over the crew. Upon this theory of the meaning of the pleadings the case seems to have been tried.

For the reasons hereinabove stated the judgment is reversed and the cause remanded to the court below with directions to enter judgment for the defendant notwithstanding the verdict.

[fol. 57] IN SUPREME COURT OF OREGON

Appeal from Multnomah County

CECIL I. HUST, Respondent,

v.

MOORE-MCCORMACK LINES, INC., a Corporation, Appellant

JUDGMENT—April 24, 1945

This cause on March 6, 1945, having been duly argued and submitted upon and concerning all questions arising upon the transcript and record and then reserved for further consideration; and the court having fully considered all said questions as well as suggestions of counsel in their argument and briefs finds there is error as alleged.

It is therefore considered, ordered and adjudged that the judgment of the court below in this cause rendered and

entered be and the same is in all things reversed and set aside.

It is further ordered that appellant recover of and from respondent its costs and disbursements in this court taxed at $405.85.

It is further ordered that this cause be remanded to the court below from which the appeal was taken with directions to enter a judgment for the defendant, notwithstanding the verdict, and in accordance herewith.

[fol. 58] IN SUPREME COURT OF OREGON

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—June 29, 1945

This cause having heretofore been submitted on respondent's petition for a rehearing, and at this time the court being fully advised in the matter, it is ordered that said petition be and the same is hereby denied.

[fol. 59] [File endorsement omitted]

IN THE SUPREME COURT OF OREGON

[Title omitted]

PETITION FOR ORDER STAYING EXECUTION AND ENFORCEMENT OF JUDGMENT AND MANDATE TO ENABLE APPLICATION FOR WRIT OF CERTIORARI—Filed July 18, 1945

To the Honorable Harry H. Belt, Chief Justice of the Supreme Court of the State of Oregon or to George Rossman, the Acting Chief Justice thereof:

Your petitioner, Cecil I. Hust, plaintiff-respondent in the above entitled cause, respectfully presents this, his application for an order staying the execution and enforcement of the judgment of the above entitled Court and cause and staying the issuance of a mandate therein. This petition is filed pursuant to the provisions of Section 350 of Title 28 of the United States Code to enable said petitioner to apply for and obtain a writ of certiorari from the Su-

preme Court of the United States. The grounds upon which said petition for certiorari will be based will include assignments substantially as follows, among others:

1. That the above entitled cause is an action by plaintiff-respondent, a seaman, for damages for personal injuries received while employed by defendant-appellant aboard a ship operated by said defendant-appellant. Said cause was and is based upon Section 688 of Title 46, United States Code, commonly known as the "Jones Act", which provides further that such actions may be brought in state as well as in federal courts. By virtue of said action under said Act plaintiff-respondent thereby claimed the bene-[fol. 60] fit of rights, privileges and immunities under a statute of the United States within the meaning of Section 344 (b) of Title 28, United States Code.

2. That in appealing from the original judgment of the Circuit Court of the State of Oregon for Multnomah County, which recognized the right of plaintiff-respondent under said Jones Act to damages for said injuries, the defendant-appellant specifically recognized said cause as brought under said Jones Act, but contended that plaintiff was not employed by defendant, within the meaning of said Act, urging as reasons therefore an interpretation placed by defendant upon a certain contract by and between defendant-appellant and the War Shipping Administration.

3. That on said appeal plaintiff-respondent maintained and continued his position that under said Jones Act he was granted the right and privilege of maintaining an action against this defendant-appellant for said damages, that under said Act he was entitled to judgment therefor, that by virtue of Public Law 17, 50 U. S. C. A. App. Sec. 1291 it was made plain by Congress that such rights of seamen under the Jones Act were not destroyed by contracts such as entered into by defendant-appellant and the War Shipping Administration and that to hold to the contrary would be contrary to precedents established by the United States Supreme Court in the case of *Brady v. Roosevelt S. S. Co.*, 317 U. S. 3.

4. That in reaching its decision herein this Honorable Court specifically recognized that said suit was brought under said Jones Act and found it necessary to determine whether plaintiff was employed by defendant within the

meaning of said Act and in reaching its decision on this question also found it necessary to consider the meaning and effect of said contract between defendant-appellant and the War Shipping Administration in the light of the expressed intent of Congress in said Public Law 17 and in [fol. 61] the light of the decision of the United States Supreme Court in the case of *Brady v. Roosevelt S. S. Co.*, supra. It was specifically recognized by this Honorable Court that "there is no decided weight of authority on this important question, which ultimately must be determined by the Supreme Court of the United States."

5. Therefore, your petitioner will contend in his petition for certiorari that this Honorable Court, in denying recovery of damages under said Jones Act for personal injuries, thereby denied to said petitioner the benefit of rights and privileges specially set up and claimed under statutes of the United States within the meaning of Section 344 (b) of Title 28, United States Code.

The reasons why a stay is deemed necessary are that under the above mentioned judgment entered herein it is provided that defendant-appellant be allowed costs and disbursements in the amount of $405.85, and unless said judgment and mandate are stayed execution may be levied thereunder upon your petitioner.

Wherefore, petitioner prays that an order be issued staying execution and enforcement of the judgment of the above entitled Court and cause and staying the issuance of a mandate therein for a period of three months from the overruling of the petition for rehearing herein, to-wit: three months from the 29th day of June, 1945, and if said cause shall have been docketed in the Supreme Court of the United States within said time for the further period until final disposition thereof by the Supreme Court of the United States and respectfully asks that the security to be required of your petitioner therefore be now fixed by your Honor.

(S.) Green Landye, Green & Landye, B. A. Green, Edwin D. Hicks, Attorneys for Petitioner.

[fol. 62] I hereby certify that it is the bona fide intention of the plaintiff-respondent, Cecil I. Hust, to remove this case to the Supreme Court of the United States by appeal, or to make application to said court for a writ of certiorari, or do both, as he may be advised, within the next ninety

days, and that I believe there is merit in his case and that the judgment of the Supreme Court of the State of Oregon ought to be reversed by the Supreme Court of the United States.

(S.) Edwin D. Hicks, of Counsel for Petitioner.

Service of the within Petition and accompanying surety bond accepted this 17th day of July 1945.

(S.) Erskine Wood.

[fol. 63] [File endorsement omitted]

IN THE SUPREME COURT OF OREGON

[Title omitted]

ORDER STAYING EXECUTION AND ENFORCEMENT OF JUDGMENT AND MANDATE—Filed July 21, 1945

Upon application of Cecil I. Hust, plaintiff-respondent in the above entitled cause, by Edwin D. Hicks, one of his attorneys, for an order staying execution and enforcement of the judgment of the above entitled Court and cause and staying the issuance of a mandate therein to enable said petitioner to apply for and obtain a writ of certiorari from the Supreme Court of the United States, and good cause therefor being shown; and petitioner having filed a good and sufficient undertaking, conditioned as required by law;

Now, Therefore, said undertaking in the amount of $1,000.00 is approved and it is ordered that the execution and enforcement of said judgment and the issuance of said mandate be and they are hereby stayed until the Supreme Court of the United States passes upon the petition to be made thereto in behalf of the plaintiff-respondent herein for a writ of certiorari, provided that application for said writ is made to the Supreme Court of the United States within three months from the 29th day of June, 1945.

Dated this 21 day of July, 1945.

(S.) George Rossman, Acting Chief Justice.

[fols. 64-66] Bond on application for certiorari for $1,000 approved and filed July 21, 1945, omitted in printing.

[fol. 67] [File endorsement omitted]

IN THE SUPREME COURT OF OREGON

[Title omitted]

STIPULATION FOR EXTENSION OF BOND ON APPLICATION FOR WRIT OF CERTIORARI—Filed October 1, 1945

The plaintiff-respondent herein, Cecil I. Hust, having previously filed herein a petition for an order staying execution and enforcement of the judgment and mandate herein to enable application for a writ of certiorari from the Supreme Court of the United States, accompanied by an undertaking upon the condition that if said Cecil I. Hust within three (3) months from the 29th day of June, 1945 makes application to the Supreme Court of the United States for such writ of certiorari and if he obtains an order granting said application and if he makes good his plea in the Supreme Court of the United States or if, failing therein, he makes payment of all said costs and damages, then the obligation is to be void, else to remain in full force and effect; and

An order having been entered herein on July 21, 1945 approving said undertaking and staying said execution and enforcement until the Supreme Court of the United States passes upon said petition for writ of certiorari, provided that application for said writ be made on or before September 29, 1945; and an order having been entered in the Supreme Court of the United States on September 17, 1945 extending the time for filing said petition to and including October 29, 1945, based upon petitioner's application alleging that the preparation of the record for review by the clerk of the Supreme Court of the State of Oregon had been unavoidably delayed due to the fact [fol. 68] that continued negotiations for the purpose of stipulating upon the portions of the record to be prepared for review had been interrupted by the sudden illness of Erskine Wood, attorney for defendant-appellant herein; and

The parties having stipulated that an order may be issued extending the stay of execution and enforcement of the judgment and mandate herein until said cause shall have been docketed in the Supreme Court of the United States and until disposition thereof by said court, provided that

application for said writ is made on or before October 29, 1945, or on or before such further date as may be ordered by the Supreme Court of the United States; and that the stipulation for extension of bond on application for writ of certiorari filed herewith be approved; and now, therefore,

It is hereby stipulated and agreed by and between the parties hereto and by and between said parties and the Fidelity & Deposit Company of Maryland, the surety for said undertaking and bond that said bond may be extended by amending the condition upon which said bond was issued to read as follows:

> "Now, therefore, the condition of the above undertaking is such that if Cecil I. Hust makes application to the Supreme Court of the United States for such writ of certiorari on or before October 29, 1945 or on or before such further date as may be ordered by the Supreme Court of the United States, and if he obtains an order granting said application and if he makes good his plea in the Supreme Court of the United States, or if failing therein, he makes payment of all said costs and damages, then the obligation is to be void, else to remain in full force and effect."

Dated this 29th day of September, 1945.

Cecil I. Hust, Principal and Plaintiff-Respondent, by (S.) Edwin D. Hicks, One of his attorneys.

[fol. 69] Fidelity and Deposit Company of Maryland, by (S.) Clarence D. Porter, Attorney in Fact.

Countersigned:

(S.) Clarence D. Porter, Resident Agent; Moore McCormack Lines, Inc., Defendant-Appellant, by Erskine Wood, One of its Attorneys. (Seal.)

Approved this 1st day of October 1945.

(S.) George Rossman, Justice.

[fol. 70] [File endorsement omitted]

IN THE SUPREME COURT OF OREGON

[Title omitted]

PETITION FOR EXTENSION OF ORDER STAYING EXECUTION AND ENFORCEMENT OF JUDGMENT AND MANDATE—Filed October 1, 1945

Your petitioner Cecil I. Hust, having previously filed herein a petition for an order staying execution and enforcement of the judgment and mandate herein to enable application for a writ of certiorari from the Supreme Court of the United States, accompanied by an undertaking therefore; an order having been entered herein on July 21, 1945 approving said undertaking and staying said execution and enforcement until the Supreme Court of the United States passes upon said petition for writ of certiorari, provided that application for said writ be made on or before September 29, 1945; and an order having been entered in the Supreme Court of the United States on September 17, 1945 extending the time for filing said petition to and including October 29, 1945, based upon petitioner's application alleging that the preparation of the record for review by the clerk of the Supreme Court of the State of Oregon had been unavoidably delayed due to the fact that continued negotiations for the purpose of stipulating upon the portions of the record to be prepared for review had been interrupted by the sudden illness of Erskine Wood, attorney for defendant-appellant herein;

[fol. 71] Wherefore, petitioner prays that an order be issued extendin- the stay of execution and enforcement of the judgment and mandate herein until said cause shall have been docketed in the Supreme Court of the United States and until disposition thereof by said court, provided that application for said writ is made on or before October 29, 1945, or on or before such further date as may be ordered by the Supreme Court of the United States; and that the stipulation for extension of bond on application for writ of certiorari filed herewith be approved.

(S.) Edwin D. Hicks, of Counsel for Petitioner.

Service of a verified copy of the within petition is hereby accepted this 29 day of September, 1945 and the requested extension is hereby stipulated to and agreed upon.

(S.) Erskine Wood, Of counsel for Respondent.

[fol. 72] IN THE SUPREME COURT OF OREGON

[Title omitted]

ORDER EXTENDING STAY OF EXECUTION AND ENFORCEMENT OF JUDGMENT AND MANDATE

Upon application of the plaintiff-respondent herein, by one of his attorneys, for an order extending the stay of execution and enforcement of the judgment and mandate herein to enable petitioner to apply for and obtain a writ of certiorari from the Supreme Court of the United States, and good cause appearing therefore, and petitioner having filed a stipulation for the extension of the undertaking previously filed herein and approved:

Now, therefore, said stipulation for extension of bond on application for writ of certiorari is approved and it is ordered that the stay of the execution and enforcement of said judgment and the issuance of said mandate be and it is hereby extended until the Supreme Court of the United States passes upon the petition to be made thereto in behalf of the plaintiff-respondent herein for a writ of certiorari, provided that application for said writ is made to the Supreme Court of the United States on or before October 29, 1945 or until such further date as may be ordered by that Court.

Dated this 1st day of October, 1945.

George Rossman, Justice.

[fol. 72a] [File endorsements omitted]

IN THE CIRCUIT COURT OF MULTNOMAH COUNTY

No. 151,782

CECIL I. HUST, Plaintiff,

vs.

MOORE-MCCORMACK LINES, INC., a Corporation, Defendant

Proposed Bill of Exceptions, Presented July 12, 1944—Filed July 17, 1944

TO THE CLERK:

The above named defendant, Moore-McCormack Lines, Inc., herewith tenders a proposed bill of exceptions in the above entitled cause, consisting of a transcript of the whole

testimony and all the proceedings had at the trial including the exhibits offered and received or rejected, the instructions of the court to the jury, defendant's motion for a new trial and the courts order denying same, together with memorandum opinion referred to in said order. This bill of exceptions contains all the evidence, and a complete record of the trial.

(S.) Wood, Matthiessen & Wood, Erskine Wood, Attorney for Defendant.

Service of this Proposed Bill of Exceptions on July 12th, 1944, by delivery of a copy, is hereby admitted.

(S.) B. A. Green, of Attorneys for Defendant.

[fol. 72-b] In the Circuit Court of Multnomah County

[Title omitted]

Motion to Set Aside the Judgment and for a New Trial

Comes now the defendant and moves that the judgment entered in this cause be set aside and for a new trial on the ground and for the reason that the verdict is for excessive damages appearing to have been given under the influence of passion or prejudice.

In making this motion, the defendant does not waive the errors which it urged upon the Court in its motion for judgment notwithstanding the verdict.

Wood, Matthiessen & Wood, Erskine Wood and Lofton L. Tatum, Attorneys for Defendant.

[fol. 72-c] In the Circuit Court of Multnomah County

[Title omitted]

Order Denying Motions

Defendant's motion for Judgment non obstante Veredicto is hereby denied.

Defendant's motion for a new trial is also hereby denied.

Both motions are denied for the reasons stated in the Court's Memorandum Opinion, dated July 5, 1944, and filed this date.

Dated this 6th day of July, 1944.

(S.) Martin W. Hawkins, Judge.

[fol. 72d] MEMORANDUM OPINION ON MOTIONS

CIRCUIT COURT OF OREGON, FOURTH JUDICIAL DISTRICT, DEPARTMENT NO. 1

No. 151-782

Portland, Oregon, July 5, 1944.

Martin W. Hawkins, Judge

Wood, Matthiessen & Wood, Attorneys at Law, Yeon Building, Portland, Oregon; Green & Landye and Mr. Edwin D. Hicks, Atty's. at Law, Corbett Building, Portland, Oregon.

Re: Cecil I. Hust vs. Moore-McCormack Lines, Inc.

GENTLEMEN:

Since the entry of judgment in the above-entitled case defendant has filed Motion for a Judgment non obstante Veredicto, and a further Motion to set aside the Judgment and for a New Trial. In passing upon the Motion for a Judgment non obstante Veredicto I will again advise gentlemen of counsel that in view of the situation existing in other jurisdictions giving rise to diversity of opinions as to whether or not an action will lie against the steamship company under General Agency Agreements with the War Shipping Administration for the operation of vessels, I feel that an injustice would be done to the plaintiff were I to allow this sort of motion and have it reversed on appeal. I advised you at the time of trial and at the time of hearing of the motion as to how I felt about this matter, and I see no reason for assuming a different position at this time.

Regarding the Motion to set aside the judgment and for a New Trial, I have come to the conclusion, from a review of the authorities, that the state court in the trial of mari-

time cases has a right to, and does follow Federal procedure in matters of this sort. Federal courts have the power to grant a new trial for excessive damages. Federal courts also have the power to reduce the judgment to a proper figure and to require plaintiff to file a remittitur for the difference between the amount of the verdict and the amount deemed by the Court to be proper, and if plaintiff consents thereto and files a remittitur, the Court permits a judgment to be entered for the amount deemed to be proper. In the event the plaintiff refuses to follow the Court's suggestion, the Court then grants a new trial.

Were the Court to follow that procedure in this case, the primary question, that of liability, would not be settled except as the plaintiff would appeal from the Court's order granting a new trial. This would place the burden of expense of appealing upon the prevailing party in the trial court. This would hardly appear to be fair to the plaintiff under the existing circumstances. I do not feel that the Court has any power of authority to cut the verdict to an amount deemed to be proper, except as indicated above.

[fol. 72e] I have come to the conclusion that the damages re excessive and out of proportion to the plaintiff's injuries nd disabilities suffered, but do not feel inclined to require he plaintiff to file any remittitur in this case. I say this ecause I feel that the important and paramount question o be decided is as to whether or not liability exists against ne person who conducts the business of the vessel under is General Agency Agreement with the Government. If ne Supreme Court should feel that no liability exists, utting the verdict and requiring the filing of a remittitur ould solve no problem, for the plaintiff would then not be ntitled to recover in any sum. If I cut the amount to a um that I deem proper the plaintiff would have no right f appeal upon acceptance and the filing of a remittur. The defendant in such a case would still have its ght of appeal, and defendant has indicated to the Court nat were the Court to allow any substantial sum as damges, it would be obliged to appeal, in order to have the question of liability determined in this jurisdiction.

For the foregoing reasons, this motion is also denied. Counsel will prepare the necessary order.

Very truly yours, (S.) Martin W. Hawkins, Judge.

H:p.

[fol. 73] PLAINTIFF'S EVIDENCE

CECIL I. HUST, called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hicks:

Q. Your name is Cecil Hust?
A. Cecil I. Hust.
Q. You are the plaintiff in this cause?
A. Yes, sir.
Q. Did you enter the Merchant Marine service, Mr. Hust, in the year 1942?
A. Yes, sir.
Q. Prior to that time had you presented yourself to the medical authorities of the military department of the Government for purposes of examination?
A. Yes, sir.
Q. And were you rejected for military service?
A. Yes, sir.

* * * * * * *

Q. And where did you go?
A. I went to the Shipping Commissioner here in town.
Q. Now, to your knowledge, what is the fact as to whether or not all crewmen of merchant vessels, regardless by whom they are owned, present themselves at the United States Shipping Commissioner's office for employment?
A. That is right.
Q. And that would be true of any vessel, regardless by whom operated in this particular service, is that right?
A. That is correct.
Q. And were you accepted for service aboard any particular vessel?
A. Yes, sir.
[fol. 74] Q. And by whom were you employed in that connection?
A. It was the James J. Griffith & Sons first.
Q. James J. Griffith & Sons?
A. Yes, sir.
Q. And were they operators of the Jonathan Edwards, a Liberty vessel?
A. Yes, sir.

Q. Where did you obtain that employment?

A. Right here in Portland.

Q. And you had one voyage aboard the Jonathan Edwards, did you, a liberty vessel?

A. Yes, sir.

Q. And in what capacity did you serve?

A. A wiper.

Q. How long did the voyage last aboard the Jonathan Edwards?

A. Three months.

Q. After that voyage was completed, did you undertake another voyage?

A. Yes, sir.

Q. By whom were you employed on that occasion?

A. Moore-McCormack.

Mr. Wood: I move to strike that answer. It is clearly improper. The witness has just said he has to be employed from the United States Shipping Commissioner's office in this formal way. Let him produce the written record.

The Court: Let him testify what was done in the matter of obtaining employment and so forth.

Q. All right, Mr. Hust. Please state what you did in respect to the Mark Hanna to obtain employment.

A. You go before the Shipping Commissioner and receive your papers.

[fol. 75] Q. Were certain papers given you on that occasion?

A. Yes, sir, my seaman's papers.

Q. And I assume that you signed what is known always as seamen's articles, did you?

A. Yes, sir.

* * * * * * *

Q. Mr. Hust, you stated you were furnished certain papers at the time you applied for employment aboard the Mark Hanna?

A. Yes, sir.

Q. Do you remember what papers were furnished you?

A. That is your certificate of identification and your ordinary seaman's papers and wipers papers.

Q. Were you afforded a crew pass and muster card?

A. Yes.

(Crew pass and muster card, dated Oct. 13, 1942, was marked Plaintiff's Exhibit 1 for Identification.)

Q. I hand you Plaintiff's Exhibit 1 for Identification and ask you to state what it is.

A. That is my crew pass and muster card.

Q. Was that issued to you while you were on the ship?

A. Yes, sir.

Q. And by whom was it issued?

A. The Captain.

Q. The Captain of the vessel?

A. Yes, sir.

Mr. Hicks: I offer this in evidence.

Mr. Wood: I object to it as incompetent, irrelevant and immaterial. I would like your Honor to look at it (handing the document to the Court).

[fol. 76] The Court: Is that on this ship?

A. It is on the Mark Hanna.

Mr. Hicks: On the Mark Hanna, furnished him when he went aboard the vessel, as he testified, the usual muster card.

The Court: This was at the beginning of your employment on this ship?

A. Yes, sir.

The Court: It will be received.

Mr. Wood: I would like an exception, your Honor.

The Court: Exception allowed.

(The crew pass and muster card, previously marked Plaintiff's Exhibit 1 for Ident., was received in Evidence.)

* * * * * * *

Q. Now, Mr. Hust, in respect to your service aboard the vessel Mark Hanna; Can you tell us by whom you were paid? I refer to your wages.

A. I was paid by Moore-McCormack.

Q. When you say Moore-McCormack, you mean Moore-McCormack Lines, the defendant in this case?

A. Yes, sir, that is right.

Q. Now, normally the crew members are paid off in cash, are they?

A. That is right.

Q. And by whom, or by what officer of the vessel were you paid from time to time?

A. I was paid by the Purser.

Q. And the Purser is one of the crew, is he?

A. That is right.

Q. And did you at any time receive payment of your wages in any other way than direct payment by the Purser? [fol. 77] A. Except as you draw in different ports, and the Purser usually hands those out.

Q. Was that payment made by way of money contained in envelopes?

A. Yes, sir, cash counted out to you.

Q. Counted out?

A. Yes.

Mr. Hicks: Will you mark these 2, a, b, c, for identification?

(Four pay envelopes were marked Plaintiff's Exhibits 2, 2-a, 2-b, and 2-c for Identification.)

Q. I hand you, Mr. Hust, Plaintiff's Exhibits 2, a, b, and c, consisting of four brown envelopes, and ask you to state, if you will, what those are and, if you received them, the occasion on which you received them.

A. Well, that is the envelope that your money is paid to you in, one for your overtime, one for your straight time, one for your bonus, etc., etc.

Q. Then the payments are segregated each time in that manner?

A. That is right.

Q. And each classification of your wage, your bonus or what not is contained in a separate envelope?

A. That is right.

Q. And these exhibits are simply envelopes which were given you, as I understand it, when such payment was made on one of the occasions?

A. That is right.

Mr. Hicks: I offer them in evidence.

Mr. Wood: I make the same objection, incompetent, irrelevant, and immaterial.

* * * * * * *

The Court: They will be received.

Mr. Wood: An exception.

The Court: Exception allowed.

[fol. 78] (The pay envelopes, previously marked Plaintiff's Exhibits 2, 2-a, 2-b, and 2-c For Identification, were received in evidence.)

Q. Now, Mr. Hust, aside from going to the office of the Shipping Commissioner, as seamen do when they undertake to obtain employment aboard any vessel, did you have any contact with the Government people who were representing themselves as operating the Mark Hanna?

A. No, sir, the Shipping Commissioner and the Captain.

Q. Now, do you know the name of the Captain?

A. Henry Hoeppner, I believe.

Q. You had occasion to meet him personally, did you, in connection with the voyage?

A. Yes, sir.

Q. Do you know what his address is?

A. I believe it was 200 Pine Street, San Francisco, was the address.

Q. Can you tell us whether or not that is the address of the Moore-McCormack Lines, Inc.—if you know?

A. Yes, sir, that is the address.

Q. Can you tell us whether that is the address, to your knowledge, which is used by the Captain in recording himself as Captain aboard the vessel?

A. Yes, sir, that is.

Q. Where did you ship from? I am referring to the Mark Hanna now.

[fol. 79] A. From Portland. We signed the Articles in Vancouver; went aboard in Portland and signed the Articles in Vancouver.

Q. Now just very briefly, where did this voyage take you?

A. From Portland to San Francisco; Suez, Egypt, and back around to Brazil, and we were on our way home at the time this happened.

Q. And throughout the voyage and up until March 17th were you serving as a member of the crew of the Mark Hanna?

A. Yes, sir.

Q. What were your duties as a crewman aboard the vessel?

A. I was a fireman and watertender.

Q. Just briefly, what did you do in exercising your job, performing your duties?

A. Well, you fire your boilers and keep your steam where the engineer wants it.

Q. And what shifts did you work?

A. Well, I was on the eight to twelve shift. You are on four hours and off eight. You go on in the morning at eight and off at twelve, and go on again at eight at night and off at twelve midnight. That is out at sea.

Q. Where aboard the ship would you perform those duties?

A. In the engine room.

Q. Did all your duties require you to work in the engine room?

A. Yes, sir.

Q. As a fireman, wiper, and so forth?

A. Yes, sir.

Q. Did you serve as both fireman and wiper aboard the Mark Hanna?

A. No, sir.

Q. As a fireman?

A. As a fireman.

[fol. 80]. Q. And all your duties under your employment before your injury related to fireman, as I understand it?

A. Yes, sir.

Q. You were aboard the Mark Hanna, serving as a member of its crew, were you, on the 9th day of March, 1943?

A. Yes, sir.

Q. Now tell us very briefly, Mr. Hust, without going into detail, what occurred on March 9th to your vessel.

A. Well, just a few minutes past two o'clock in the morning, March 9th——

Q. A little bit louder. We can hardly hear you back here.

A. Just a few minutes past two o'clock—past one o'clock, March 9th, we were attacked by submarines and our ship was torpedoed.

* * * * * * *

Q. Then there was a period of eight days elapsed from the time of torpedoing until the vessel reached the harbor of the Port of Spain?

A. That is right.

Q. During that eight-day period did the crew aboard the vessel, to your knowledge, perform their ordinary duties as crewmen?

A. Yes, sir.

Q. And did you?

A. Yes, sir.

Q. Served in the same location throughout the ship?

A. Yes, sir.

Q. On March 17th, and I refer to the morning of that day, did you receive any special orders as to a duty you should perform?

A. I received orders to go in the ship's locker in the forepeak and bring out a mooring line, a large mooring line.

Q. Now, prior to that had you been ordered to present yourself on deck.

A. No, sir.

[fol. 81] Q. You were on the main deck when you received the order?

A. Yes, sir.

Q. Can you tell us which of the officers gave the order?

A. Well, I am not positive. I think it was the Boatswain. The Boatswain and the Captain were both right there.

Q. How far away from you?

A. Well, I would say they were eight or ten feet. They were all right in the forepeak of the ship.

Q. The Boatswain and the Captain were right together?

A. Close together, yes, sir.

Q. At the time you and I presume Mr. Cameron received an order.

A. Yes, sir.

Q. Now tell us explicitly what the order was you received.

A. We received orders to go down in the locker and bring out a large mooring line for the purpose of towing the ship.

Q. Two of the crew were delegated to do that, were they?

A. That is right.

Q. Did you know what the locker room was?

A. I knew there was a locker there, yes.

Q. Had you ever been in it?

A. No, sir.

Q. Had you ever been in the locker room on any Liberty ship?

A. Not in that part of the ship, no, sir.

Q. Not in the fore part?

A. No, sir.

Q. Well, were you in any sense familiar with the layout of the locker room and how it was constructed?

A. No, sir.

[fol. 82] Q. After receiving that order, what did you and Mr. Cameron, the ordinary seaman, do?

A. We proceeded to go down——

The Court: (interrupting) Are you proceeding now to the matter of the injury?

Mr. Hicks: Yes.

The Court: I think this is a good place for adjournment. Court will adjourn until two o'clock this afternoon.

(Whereupon, at 12 o'clock, m., a recess was taken until 2:00 o'clock, p. m. of this day, Friday, May 12, 1944.)

Portland, Oregon, Friday, May 12, 1944, Two o'Clock, P. M.

Cecil I. Hust, the plaintiff, resumed the stand, and furtlier testified as follows:

Direct examination (Continued).

By Mr. Hicks:

Q. At the noon recess you had received the orders to proceed to the locker room and were proceeding to execute them. Will you state now to the jury in your own words what occurred, referring to the trip that you and Mr. Cameron made down into the locker room in response to the order given you by the Boatswain.

A. We had orders to go down for this mooring line, and Mr. Cameron went down first; I followed him, and there were no lights, it was dark in the——

Q. Speak out loud.

A. It was dark in the locker we were going into. The only light showing was from the open hatch, the small hatch we went down the vertical ladder, and the mooring line was back over in the corner, and I was following Mr. [fol. 83] Cameron, and he evidently knew the hole was there and stepped over it, and I stepped into it. The only thing I could see was to follow his outline as he was going back into the locker.

Q. Just describe a little more fully, if you will, the degree of darkness that was in the room.

A. Well, going from the outside into a dark room of that kind, it is pretty dark, and the only thing I could positively see was the outline of Mr. Cameron just ahead of me. I was trying to follow him, and he knew where the line was stored and just how to get back to it and everything; and it was absolutely pitch black back in the corner where we were at—where we were headed for.

Q. You said you went down a vertical ladder; I take it, from the main deck.

A. From the main deck down onto the second deck. We went down a vertical ladder and we had to go back in the storeroom approximately, I would say, ten feet to where the open hatch was.

Q. That would be ten feet across the floor of the second deck in the locker room?

A. That is right.

Q. From the point where the ladder comes down from the main deck?

A. That is right.

Q. Was there a hatch cover off the hatch or the hole leading from the main deck down to the locker room?

A. Yes, sir.

Q. Could you describe that for us?

A. Well, it is an oval-shape hatch cover, a small hatch, I would say it is about four-foot, and it has a water-tight cover that they can dog down when they are out in the rough seas.

Q. What was the position of the first deck hatch cover, that is, was it lying over flat on the ship or was it propped up, or what was it?

[fol. 84] A. It was opened up. They have a chain, I believe, that stops it, to keep it from going clear back.

Q. Do you remember what kind of a day it was?

A. It was a cloudy, dreary day.

Q. And this was about what time?

A. About seven or seven-thirty in the morning.

Q. Had you ever been in this locker room before?

A. No, sir.

Q. Could you tell us about how large a room it was?

A. I don't know exactly. I would say it is, well, it isn't square, it is the shape of the bow of the ship. It is right in the bow, is where it is at. I would say it is about 25 feet across at the widest place; it narrows down to a point.

Q. Had you ever been in a similar locker room aboard any other ship before?

A. No, sir.

Q. Now, did Mr. Cameron go down ahead of you,—I understand?

A. Pardon?

Q. Mr. Cameron went down ahead of you?

A. Yes, sir.

Q. Did he say anything to you at all when he got down into the locker room?

A. No, sir.

Q. Were you executing the order with any particular speed?

A. Well, not exactly what you would call speed, but when they give an order they expect you to carry it out right away.

Q. Were you able to see either the stanchions or this hole, or hatch, as we call it, in that room?

A. No, sir.

Q. Did you have anything at all to guide yourself by except this bare outline of Mr. Cameron as he proceeded ahead of you?

A. No, sir.

[fol. 85] Q. Would you tell us approximately how far it was from the second deck locker room down to the third deck into which you fell?

A. I would say it is approximately ten or twelve feet.

Q. You didn't measure it?

A. No, sir.

Q. That is an estimate on your part?

A. Yes, sir.

Q. Did you fall on any object at all in lighting on the floor of the third deck?

A. Yes, sir; there is a manhole cover there that is raised about five inches, four or five inches.

Q. When you say raised, you mean raised four or five inches above the floor?

A. That is right.

Q. And you fell on top of that?

A. Yes, sir.

Q. Would you tell the jury what part of your body struck first in the fall?

A. Well, I am not sure just how I hit, but I finished up by laying flat on my back, and I bumped my head, but I am not sure just how I did hit.

Q. You are not sure what position your body was in at the time you struck the floor?

A. No, I am not.

Q. You say you struck your head?

A. Yes, sir.

* * * * * * *

Q. There were no lights showing in the locker room at the time you went down there, as I understand?

A. No, sir.

Q. Were there any electric light facilities in that room at all; was it wired for electric globes and so forth?

[fol. 86] A. Yes, sir.

Q. And to your knowledge was a globe inserted in the locker room so that the electric lights were showing in the room before you left there?

A. Yes, sir.

Q. The light was turned on?

A. The light was on.

Q. Do you know whether there was a switch to that light?

A. Well, there is a switch in there but I don't know just where it is at.

Q. You have never seen it?

A. No, sir.

Q. At any rate, before they took you out of there, the lights were turned on?

A. That is right.

* * * * * * *

Q. By the way, before they took you out from the third deck on which you fell, did they bring a light down into the third deck, into the hold where you fell?

A. Yes sir.

Q. Were you able to see whether there were stanchions surrounding the hatch on this second deck?

A. There were stanchions there, yes.

Q. Was there any safety chain or any rope down there?

A. No, sir.

Q. Just an open hatch then?

A. Yes, sir.

* * * * * * *

[fol. 87] Mr. Hicks: You may take the witness.

Cross-examination.

By Mr. Wood:

Q. You can surely go fishing, can't you, Mr. Hust?

A. Well, I think that would be a lot easier than the rest of it.

Q. Especially if you were in a boat. Well, I wanted to take up this question of your wages, because that is where you left off just before the recess. Now, you said you earned on the ship from $330 to $340 a month?

A. $1705 for the five months' period.

Q. Well, that is what it comes to?

A. Yes, sir.

Q. And with the Kaiser people you are earning about $240 a month?

A. Something like that.

Q. What?

A. Yes, sir.

Q. But it is a fact, is it not, that employment on shipboard is not steady employment, but that there are intervals between ships? That is true, isn't it?

A. There is only supposed to be a short interval.

Q. Well, that depends upon how busy the shipping world is?

A. That is right.

Q. There is always some interval between one ship before you get a job on another ship, isn't there?

A. A lot of times fellows stay right on the same ship.

Q. Yes, if they are going to make another voyage right away.

A. That is right.

Q. But you don't deny that employment on ships is from ship to ship, do you?

A. That is right.

Q. And it is not the same kind of steady, continuous employment that you have at the Kaiser yard, is it?

[fol. 88] A. It would be steady now, yes.

Q. Well, it isn't usually, is it?

A. Well, I don't know. I never shipped out in peace time. I wouldn't know that.

Q. Then there is another thing, in the Kaiser yard you are getting $240 a month for safe and easy work; you yourself described it was very easy?

A. Yes.

Q. Perfectly safe?

A. Yes.

Q. And on the ship you were getting $300 a month for dangerous, hard work; that is right, isn't it?

A. Well, firing is not hard work.

Q. Well, you said the Government had been paying you a lot of money as bonuses for going into these dangerous areas, didn't you?

A. Well, now, I didn't say that. The Moore-McCormack paid those bonuses at the end of the trip, with the rest of my pay.

Mr. Hicks: A little louder, please.

A. I said Moore-McCormack paid those payments at the end of the trip, with the rest of my pay.

Q. Because you had been in dangerous areas?

A. Yes.

Q. Well then, it is certainly dangerous work, isn't it?

A. Well I suppose so.

Q. Now I would like to go back to the circumstances of how you got this job. You first had been on the Jonathan Edwards. That was another ship, wasn't it?

A. Yes, sir.

Q. And you left the Jonathan Edwards at the end of a voyage?

A. Yes.

Q. Where?

A. In New York.

[fol. 89] Q. Then did you come back here?

A. I came back here.

Q. How long an interval was it then between your leaving the Jonathan Edwards and your going on the Mark Hanna?

A. I believe it was just about a month. I would say, it might vary a day or two one way or the other, but it was not much over that. I got back here the 9th day of September and went aboard the Mark Hanna on the 3rd day of October.

Q. You got back here——

A. I arrived here on the 9th day of September and went aboard the Mark Hanna on the 3rd day of October.

Q. And you had left the Jonathan Edwards in New York?

A. Yes, sir.

Q. So you crossed the continent?

A. Yes, sir.

Q. So there was about a month- time between ships?

A. Yes, sir.

Q. You joined the Mark Hanna in Vancouver, did you?

A. I went aboard in Portland.

Q. I know, but you signed articles at Vancouver?

A. Yes, sir.

Q. You know when you sign articles that is when the job for that voyage begins, doesn't it?

A. Yes, sir.

Q. Of course, I know you must have signed them before a Shipping Commissioner; in fact, I think you said you did.

A. Yes, sir.

Q. Do you remember who it was?

A. I don't remember whether it was Mr. Jones or not. I am not sure.

Q. You refer to Lieutenant Harold Jones, of the Coast Guard?

A. Yes, sir.

[fol. 90] Q. He is in charge of the Shipping Commissioner's office here in Portland, isn't he; he is head man, isn't he?

A. He is the head Shipping Commissioner.

Q. His First Assistant, I think, is named Blundell.

A. I know him when I see him, that is about all.

Q. Anyway, one of them brought the Articles over to the ship at Vancouver and there you all signed on?

A. Yes, sir.

Q. And that was your contract of employment for that voyage, wasn't it?

A. Yes, sir.

. . . . . .

Q. What was the date of signing on?

A. October 9th, I believe.

Q. All right. On October 9th you signed Shipping Articles in the usual Government form on the Mark Hanna, didn't you?

A. We signed before the Shipping Commissioner, and the Captain was there.

Q. Yes, they are on the usual Government form of Shipping Articles. You know what they are?

A. Usually when you sign the Articles there are very few of the fellows that take time to read them. If they did, it would take a week to get them signed on.

Q. I am not asking you that. I am asking if you signed Shipping Articles in usual Government legal form?

A. Yes, sir.

Q. Have you ever seen those articles since?

A. No, sir.

Q. You must have signed off those Articles, didn't you, when you left the ship?

A. They only brought the payoff voucher for us to sign—for me to sign, anyway. They brought it out to the New York Marine Hospital at Staten Island.

[fol. 91] Q. That is because you were injured, I suppose.

A. Yes, sir.

Q. Now, in the early part of your testimony, you made the statement that you were paid your wages by Moore-McCormack?

A. Yes, sir.

Q. That, I think, is a conclusion and I am going to ask you if these are not the facts: Your wages were always paid in cash, weren't they?

A. Yes, sir.

Q. In fact, I think the law requires sailors' wages to be paid in actual money, does it not—at least, that is the practice, isn't it?

A. That is the practice anyway.

Q. So the way you were paid was that the Purser on the ship handed you an envelope similar to those that you showed, with your money in them?

A. That is right. That is the envelope he handed me.

Q. And it was the Purser of the ship that handed it to you?

A. Yes, sir.

Q. And you know no more about whether it was Moore-McCormack paying you than those facts indicate, do you?

A. Well, he was a Moore-McCormack man, and it was Moore-McCormack envelopes,—stamped on it.

Q. I understand that Moore-McCormack's name was on the envelopes, as shown there, but why do you say it was a Moore-McCormack man?

A. Well, he was the Purser on the ship.

Q. Certainly he was the Purser on the ship. But everybody on the ship had signed those Articles, hadn't they?

A. Yes, sir.

Q. Including the Purser, everybody on the ship, except the Captain, signs the Articles, don't they?

A. Yes.

[fol. 92] Q. So you don't know whether the Purser was a Moore-McCormack employee or an employee of the Government, employed by the Captain, do you?

A. I believe the Pursers are hired by the steamship companies themselves.

Q. I am asking you what you know, Mr. Hust, not what you believe.

A. I don't know.

Q. How did you happen to join the Mark Hanna rather than some other ship; did you say you went up to the Shipping Commissioner's office and applied for a job?

A. Not at that time. I went to the Union hall.

Q. You were hired out of the Union hall?

A. Yes, sir.

Q. And the Union hall sent you to the ship?

A. The Union hall sent us to the ship.

Q. And there is where the Shipping Commissioner met you and you signed on—on the ship?

A. Yes, sir.

Q. Now, when you entered this forepeak locker where the line was, you say you had never been in that place before?

A. No sir, I hadn't.

Q. But you had been in a place almost exactly like it on the Jonathan Edwards, hadn't you?

A. I am not too sure whether I was ever in that locker on the Jonathan Edwards or not. I am not positive about that. I don't believe I was ever in that locker.

Q. I don't set too much score by it, but you remember testifying when you gave your deposition about these matters in October, 1943?

A. Yes, sir.

Q. No, it was November—excuse me—in 1943. I think you testified at that time you had been in the locker just like this on the Jonathan Edwards. Don't you remember that?

[fol. 93] A. I might have been in it on the Jonathan Edwards.

Q. I will read to you from this deposition; I think it will refresh your memory. I will ask you if you didn't testify like this—I asked the question: "If you hadn't been down there before, how did you know there was a hole down there? Answer: I was down there on another ship, a Liberty ship. Question: The same general type of ship? Answer: The same general type, a Liberty ship. Question: That is, you were on before. What was the name of it? Answer: Jonathan Edwards." Do you remember that? Don't you remember testifying to that?

A. Yes, sir, I do.

Q. Now, there was a lot of talk here before the jury about a hatch, and I am not sure they all understand what these shipping words mean. What is a hatch?

A. Well, generally speaking you talk of the main cargo hold as your hatches. The small ones—they also call those hatches, the seamen do.

Q. Well, a hatch is an opening on the deck, isn't it?

A. That is right, yes, sir.

Q. It might be as big as this table, or it might be nearly as big as this room?

A. Yes, sir.

Q. According to the different occasions.

A. Yes, sir.

Q. Now, when you went into this room from the forepeak, you went down a hatch?

A. Yes, sir.

Q. How big is that hatch, about as big as this table?

A. No, sir.

Q. How big?

A. About four feet in diameter.

Q. The cover was off of that hatch?

A. The cover was open. It has a watertight cover. They seal that down while they are at sea.

Q. And there was some daylight coming down?

[fol. 94] A. Some, yes, sir.

Q. So that you could dimly see the man in front of you?

A. I could just see the outline of him.

Q. Why didn't you, instead of stumbling around there in the dark, try to turn on the electric light?

A. I didn't even know where the switch was.

Q. Did you make any effort to find out?

A. No, sir.

Q. And neither did Cameron?

A. No, sir.

Q. But later on when you were hurt, they did light a light there, didn't they?

A. Yes, sir, they did.

Q. I understand from your—either your testimony or one of the other witnesses whose deposition was taken, that bulb was burned out but after you got hurt they put a new bulb in there and it burned all right.

A. Yes, sir.

Q. And they took you out by that light, didn't they?

A. Yes, sir.

* * * * * * *

[fol. 95] Mr. Green: This is the deposition of Karl M. Nelson, taken on Tuesday, November 30, 1943, commencing at two o'clock, p. m., in the office of Wood, Matthiessen & Wood, 1310 Yeon Building, Portland, Oregon.

(Counsel then read the deposition to the jury, as follows):

"Direct examination.

By Mr. Hicks:

Q. Will you state your full name, please?

A. Karl M. Nelson.

Q. Mr. Nelson, were you a member of the crew of the S. S. Mark Hanna on the 9th day of March, 1943?

A. Yes.

Q. And you had been a member of the crew for some time prior to that?

A. Yes.

Q. What was your capacity?

A. Able seaman.

* * * * * * *

Q. Do you remember the incident whereby one Cecil I. Hust received certain injuries aboard the vessel on the 9th day of March, 1943?

A. Yes.

Q. Where on the boat were you stationed immediately prior to the time he received his injuries?

A. Right in the bow, forward.

Q. And where would that be with reference to the locker room into which he fell?

A. It was right above.

Q. What was the first knowledge that you had that something had occurred?

A. I heard one seaman make a statement that somebody had fallen down into the forepeak.

Q. What did you do then?

[fol. 96] A. Immediately after I heard it, as soon as I finished the job I was at, a couple of minutes, I went down to see who had been hurt.

Q. You went down into the locker room?

A. Yes.

Q. What did you see when you got down there?

A. When I first got down I saw a group of seamen standing around with a torch in their hands, and they had it shining below, and there were two seamen below there, and Hust was laying on his back across this manhole cover.

Q. You say someone had a torch there?

A. Yes.

Q. What kind of a torch?

A. An emergency lantern they have in case the lights fail.

Q. They use in case the lights fail?

A. Yes.

Q. Is it an electrical contrivance, something of that kind?

A. No, it has a battery.

Q. A battery electric?

A. Yes.

Q. What kind of light did it cast?

A. It cast a spot, a small spot.

Q. How many were present in the locker room when you got down there, if you can recall?

A. Six, I believe.

Q. How long did you remain in that locker room?

A. Oh, not more than two minutes at the most—less than that.

Q. Did you have occasion to observe whether there was an electric light burning in the locker room when you first went down?

A. I noticed that. It had not been burning.

Q. Now, was it burning at the time you came down into the locker room?

A. No, it was not.

[fol. 97] Q. Did you see anyone replace the light or fix it?

A. No, I didn't see them replace it, but it was burning immediately after that.

Q. You mean by that,—was it burning before you left the locker room?

A. Well, when I started out it had been burning then.

Q. When you started to leave the locker room?

A. Yes, when I started up the ladders. If I am not mistaken, I might even have turned on the switch,—you turn a switch on for it; but I don't recall that.

Q. Now do I understand that you turned the switch on?

A. No; I might have, if I had been climbing up, but I don't remember.

Q. But you didn't see anyone repair the light while you were there?

A. No.

Q. What, if anything, did you observe in the locker room where Mr. Hust fell, in regard to the stanchions protecting the deck?

A. There was no guard chain around the stanchions because it is an open hatch; there is supposed to be a guard chain around there to protect, you know, from——

Mr. Wood: (interrupting) Excuse me. Just to keep it clear, it is not so much a hatch as it is a manhole, is it?

A. Well, it isn't a manhole. It would be an open hatch. It is about six by six, I believe.

Q. Now, the open hatch that you refer to, that would be constructed on the first deck below the main deck, would it?

A. The first deck below the main deck, yes.

Q. How is it constructed? Will you give the approximate dimensions?

A. You mean the opening?

Q. Yes, and the stanchions.

A. Well, the opening was about six by six, and in each corner there was a stanchion about 36 inches or more high, about 40 inches high; that is, in the four corners.

[fol. 98] Q. Of the——

A. (interrupting) Of the opening.

Q. Had you been in this particular locker room before?

A. Yes.

Q. And you had seen these stanchions on this hatch before?

A. Yes.

Q. And on the other occasions when you had observed it, what did you observe, if anything, with reference to a safety chain?

A. Well, a chain was on there before.

Q. How many times previously had you been in this locker room, roughly, if you can state?

A. You mean since the torpedoing?

Q. Any time.

A. Oh, a number of times. There had not been a day go by that I hadn't been down there once.

Q. Had there been any days, occasions that you observed, when the safety chain was not present on the stanchions?

A. No.

Q. Was there a safety chain or any kind of rope or other device on the stanchions on the occasion when you were down after Mr. Hust's accident?

A. No, there was not.

Q. Did you observe whether or not a chain or other device was installed on the stanchions?

A. I did notice that later, they had put a rope guard around there.

Q. You didn't see that work done?

A. No, I did not.

* * * * * * *

Mr. Hicks: I think you may inquire.

[fol. 99] Cross-examination.

By Mr. Wood:

Q. What was the Captain's name?

A. Henry Hoeppner.

Q. Where had you signed shipping orders for this voyage?

A. Vancouver, Washington.

Q. When?

A. The 10th of October, I believe.

Q. Had you all signed at the same time?

A. Yes, we all signed at the same time.

Q. Including Mr Hust?

A. Yes.

Q. The ship was a Liberty ship turned over to Moore-McCormack at Vancouver, was it?

A. Yes, it was a Liberty ship.

Q. That is where the voyage began?

A. Well, it began in Portland. We didn't sign on until we got to Vancouver.

Q. The actual voyage begins when you sign on; you know that?

A. Yes, sir.

Q. Then you had been on this ship for quite a number of months before the torpedoing?

A. Yes.

Q. Did you say you were on the forecastle head when the accident happened?

A. Yes.

Q. And you heard somebody say that a man had fallen down; that caused you to leave the forecastle head?

A. Yes.

Q. How did you descend from the forecastle head?

[fol. 100] A. There is a ladder that goes below.

Q. To the main deck?

A. Yes.

Q. To the well deck?

A. Well, it has no well deck.

Q. Oh, it hasn't? It isn't a well-decked ship?

A. No.

Q. So when you speak of the forecastle head you mean you were just forward on the main deck?

A. On the main deck.

Q. Up in the eyes of the ship?

A. Yes.

Q. Then how did you descend from there into the locker room?

A. By a ladder.

Q. There was a locker room directly beneath where you were standing?

A. Yes.

Q. Or a manhole?

A. A manhole, you might call it.

Q. Is that the same one Hust and the other men had gone down?

A. Yes, sir.

Q. Ahead of you?

A. Yes.

Q. So that manhole I suppose had been left open by them, then you followed them?

A. It has always been; it has a door that is propped up whenever you are working down there.

Q. How big is that manhole?

A. Four by four, I think.

Q. Square or round?

A. Square.

Q. And how far down was it to the main deck in the locker room?

[fol. 101] A. About nine feet.

Q. Is that manhole directly vertical over the hatch through which Mr. Hust fell?

A. No.

Q. What relation do the two bear one to the other in distance apart,—or position, is what I mean?

A. They are about ten feet apart, I imagine.

Q. Vertically?

A. No.

Q. Horizontally?

A. Horizontally.

Q. Which one is forward of the other?

A. The after one, the one you go in first, was forward of the one Hust fell down.

Q. I see. I have forgotten, what time of day or night was this?

A. Oh, it was in the morning, somewhere around seven-thirty or eight-thirty, something like that.

Q. Was it light yet?

A. No, it was still—it was getting daylight but it wasn't light.

Q. About seven-thirty in the morning your complaint says. Did you have a light to assist you in going down?

A. No.

Q. How did you see to get down?

A. Well, you don't have to see there. You just follow the ladder right down.

Q. Well, when you stepped out on the main deck below in the locker room, could you see?

A. I could see the torch and I just followed the outline of that.

Q. You could see the light of a torch?

A. Yes.

Q. Who had that?

[fol. 102] A. I believe the Boatswain had that.

Q. Had he been there when Hust fell or did he come afterwards?

A. No, he came afterwards.

Q. You don't know where he had been working before that?

A. Yes, he had been working on the top deck up forward.

Q. Up where you were?

A. Yes.

Q. By the way, what kind of work were you doing up there?

A. We were transferring our towline hauser from one towboat to a converted yacht.

Q. Then I suppose that when you heard cries, or a statement or something that told you a man had fallen down, the Boatswain would be the first one to go down from your position?

A. Yes.

Q. And when you got there you saw Mr. Hust lying on a hatch cover, did you?

A. Yes, a manhole cover.

Q. But he had been hoisted up out of the——

A. (interrupting) No, he was still lying where he had fallen.

Q. But did you see him down below?

A. Yes.

Q. You looked down through the open hatch?

A. Yes, sir.

Q. And you saw him lying below?

A. Yes.

Q. How far below?

A. About seven or eight feet, approximately.

* * * * * * *

Q. And I suppose you mean you could see Mr. Hust by the light of the flashlights?

A. Yes.

Q. When you speak of torches, do you mean these ordinary flashlights?

A. That is what I usually call a flashlight, a torch. This [fol. 103] is a light, more or less a storm lantern.

Q. Operated by a battery?

A. Yes.

Q. It would be much like a flashlight?

A. Yes.

Q. Do you know why the chain wasn't in place around these stanchions?

A. No, I don't.

Q. You don't know how it came to be removed?

A. No.

Q. Or for what purpose?

A. No.

Q. Do you know how long ago it had been removed?

A. I know it was there the day before.

Q. In place?

A. Yes.

Q. You saw it?

A. Yes, sir.

Q. Somebody had removed it?

A. Yes, sir.

Q. Now, the bulb light that illuminated the locker room was out when you went down?

A. Yes.

Q. But before you went up again it went on?

A. Yes, before I went up again. Somebody had replaced it, or turned on the switch, I don't know.

Q. You don't know how it went on?

A. No.

Q. You think you were only down there about two minutes?

A. Approximately two minutes. I had work to do on deck. I just went down to see what had happened.

Q. How heavy a chain was this one that was missing from the stanchions?

[fol. 104] A. Oh, about three-quarters of an inch, something like that.

Q. How old are you?

A. Twenty-one.

* * * * * * *

Mr. Wood: That is all.

Re-direct examination.

By Mr. Hicks:

Q. One other question. To what extent, Mr. Nelson, was light admitted through from the main deck down into the locker room?

A. Well, there is very little light. It just casts a small glow of light, what light there was. There was not very much light.

Q. Well, could you describe that a little more fully for us, as to the extent you could see in that locker room in the absence of a light at all, if you know?

A. You couldn't see in there without a light.

Q. Had you been in that locker room when a light was not burning?

A. Have I?

Q. Yes.

A. Yes.

Q. As I understand it, from the point where the ladder from the manhole hit the floor it would be about ten feet across in the room to where the hatch would be located?

A. Yes.

Q. The hatch down which Mr. Hust fell.

A. Yes, and also immediately below the first opening there is a stanchion that comes up in a V-shape and cuts off any view of the hatch where Hust had fallen.

Q. You mean by that, it prevents the light from going down through the manhole into the locker room?

A. Yes.

Mr. Hicks: I think that is all.

[fol. 105] Re-cross examination.

By Mr. Wood:

Q. Where did you say that V-shaped stanchion was?

A. It is just aft of the—when you *do* down the ladder from the top deck down into the main deck, the locker room, when you start walking aft, right directly in front of you is this V-shaped stanchion. It comes up from the deck to the overhead.

Q. Well, a stanchion is not a plate, it is a small vertical shaft?

A. Yes, but a stanchion can be round, and it can be square.

Q. Yes, but I don't see how it would cut off any light. It is a mere shaft, rather small?

A. No, it is fairly wide, like that (indicating) at the widest spot; it is all solid.

Mr. Hicks: Indicating with his hands an area about three and a half feet apart.

Mr. Wood: That is all.

(Witness excused.)"

(Counsel then read the deposition of Alfred H. Torgerson, as follows):

"ALFRED H. TORGERSON, a witness in behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hicks:

Q. Where do you reside, Mr. Torgerson?

A. 3115 Southeast 9th Avenue.

Q. You are a Portland boy, are you?

A. Yes.

Q. And your age, please?

[fol. 106] A. Twenty-one.

Q. On the 9th day of March, 1943, you were a member of the crew of the S. S. Mark Hanna?

A. Yes.

Q. And in what capacity?

A. Able seaman.

Q. Do you remember an incident that occurred on March 9th, 1943, in which Cecil I. Hust was injured?

A. Yes, I do.

Q. About what time of day did that occur, if you can recall?

A. I can't really say that. I know it was during the daytime.

Q. Well, was it in the early morning, or late morning, or the afternoon?

A. That I couldn't say. I believe it was in the morning, though.

Q. What was it first attracted your attention to the incident?

A. I heard a commotion down below in the forepeak and I ran down there to see what it was. I knew that two men had gone down. When I started to go down I heard somebody say that somebody had fallen.

Q. Is there a manhole leading from the main deck down into the locker room?

A. Yes.

Q. And where were you stationed with reference to the manhole when you heard this commotion that you speak of?

A. On the starboard side, I imagine about—I would say about five feet from it.

Q. And what did you do?

A. I went down there right away.

Q. You descended into the locker room, did you?

A. Yes.

Q. And what did you observe in the locker room, were there any lights on there?

A. No, when I first went down there, there was darkness.

Q. There was darkness in the locker room?

[fol. 107] A. Yes.

Q. Then were there some people on the deck below?

A. There was one fellow there, I believe, one or two. I don't believe I was the first one that got down there, I think someone got down there before I did.

Q. When you say "down there" do you mean the deck below the locker room deck, the floor?

A. No, I mean when I first went down, I naturally went down to the deck above there, the main deck. Then I went down to the next deck.

Q. That is where the people were?

A. Yes.

Q. Do you recall the names of any person or persons who were down there when you got down there?

A. Yes, there was Don Cameron for one I know of besides Ted Hust.

Mr. Wood: Excuse me, I want to understand it. Ted Hust had fallen from the locker room to the deck below, hadn't he?

A. Yes.

Mr. Wood: So did you go down to the level where Ted Hust was lying?

A. Yes.

Mr. Wood: Or did you stay up in the locker room?

A. I went down where he was lying.

By Mr. Hicks:

Q. And it was on that level you observed these people you were telling us about?

A. Yes.

Q. When you got down to that level, which would be the second level below the main deck, tell us what you observed.

A. Well, first before I went down where Ted Hust was, one of the fellows that came down with me brought a torch, an emergency light. We shined that down on Ted Hust. That is the only way I could possibly see him. I couldn't see him otherwise.

[fol. 108] Q. That was after you had gotten down to the second level?

A. Yes.

Q. Now just tell us in your own words what you saw when you got down there with your torch so you could see.

Mr. Wood: Well, he didn't have a torch, himself.

A. Well, the other fellows did. I saw Ted lying on his back, and naturally he was in pain, by the expression of his face, and it seemed to me, if I remember correctly, he had one arm behind his back; so we went down there right away to see what we could do, and helped him out of there.

. . . . . .

Q. Now when you went into the locker room from the main deck and down through the manhole, was there any light in that locker room?

A. No.

Q. Was there any light coming through the manhole into the locker room?

A. No. I don't believe the sun was shining that day; it was overcast.

Q. Well, did you get down there before anyone had brought the torch that you mentioned, or the lantern?

A. Well, the fellow that brought the torch down came down at the same time I did, right after.

Q. Now, to what extent, if at all, were you able to see in the locker room without the aid of the lantern or the light?

A. You couldn't see at all. You see, when I first got down there I couldn't see anything, just coming out from light into the darkness, and as soon as the torch was used we never turned it out, we just kept it lit. There wasn't any time I tried to see without the torch; but I couldn't see when I first got down there. I stood still until the torch was lit and made my way down.

Q. Were there any electric lights burning in the locker room?

A. No, none at all.

Q. Did you go from the first deck below the main level down to the room below, where Mr. Hust had fallen?

[fol. 109] A. Yes.

Q. The two of you?

A. Yes.

Q. How long did you remain down on the second level there where Mr. Hust was?

A. Just long enough to put that—well, down where Hust was, himself?

Q. Yes.

A. Only long enough to help him out of there.

Q. And then did you after that remain in the locker room for some period of time?

A. No. I helped him get up on the main deck and then this other fellow and I went down with the torch—we went back down in there and put this rope around the hatch, around the stanchions.

Q. I understand that you and another fellow placed a rope on the stanchions; that would be on the main deck below the main deck?

A. Yes.

Q. What was the name of the other fellow?

A. I am pretty positive it was the Boatswain, Bob Heay.

Q. And did the two of you install a rope around the stanchions there to take the place of a safety chain?

A. Yes.

Q. What kind of a rope was it?

A. Oh, I would say it was about a one-inch line,—just large enough to go through the holes of the stanchions.

Q. Where did you procure the rope, or where was it procured?

A. Right on the same level as the stanchions.

Q. There was a rope there on the same level, in the same locker room?

A. Yes.

Q. Was the rope then picked up from that room and installed around the stanchions, or on the stanchions?

A. Yes.

Q. At whose instance or order, if anyone's, did you so install the rope?

[fol. 110] A. It must have been the Captain that told us to do it. Otherwise, we wouldn't have done it right away.

Q. Well, do you remember who it was that gave you the order to install the rope.

A. I would say it was the Captain. And then the Boatswain tells us what to do after that.

Q. How long did it take you to install it?

A. Well, we did it right away as soon as we got Ted out of there, so it wouldn't happen again to somebody else.

Q. What I mean is, did it take you five minutes, or three minutes? How long did it actually take you to install that rope on the stanchions?

A. I would say it would take from five to ten minutes.

Q. And how long was it after Mr. Hust fell that the rope was installed on the stanchions?

A. Oh, it must have been at least twenty minutes.

Q. When, if at all, was the electric light from the facilities of the ship, the regular light, placed in order?

A. Well, it must have been while I was putting the rope on the stanchions; the light must have been working, because I don't remember using a torch.

Q. Let us put it this way: did you see anyone repair the light or install the globe while you were down there?

A. No, I didn't see it.

Q. Can you state whether or not the electric light of the ship was burning at the time you left the locker room?

A. Yes, I would say that.

Q. It was burning?

A. Yes.

Q. Now, that electric light that I mention there, is that part of the lighting system of the ship?

A. Yes.

Q. Is it equipped with a globe screwed into a socket just [fol. 111] as an ordinary electric light?

A. Yes, it is.

Q. And you say that was burning at the time you left the locker room?

A. Yes.

Q. And that would be within a period of how long after Mr. Hust fell?

A. Well, I would say it took ten minutes—about twenty minutes altogether, so I know twenty minutes after he had fallen it was burning. I am sure of that.

Q. Had you been in this locker room before?

A. Oh, yes, quite a few times.

Q. On the other occasions when you were in the locker room did you observe anything with reference to the safety chain?

A. It was there before.

Q. You had been in there many times before, as I understand?

A. Yes, quite a few times.

Q. And it had always been there before?

A. Yes.

Q. Do you know why it had been removed?

A. Some work on deck. They had been using it on deck.

Q. Do you know when it was that the chain was removed from the stanchions?

A. Let me think; it seems to me it had been taken out quite a while before.

Q. Now if you know, just state it. If you don't know, say so.

A. No, I am not certain as to the time. Well, just—no, I can't say just how long it was.

Mr. Hicks: I think you may inquire, Mr. Wood.

Cross-examination.

By Mr. Wood:

Q. I understood you at first to say that you didn't know whether that light was burning in the locker room when you left or not, except you think it was because you were

doing some work down there and you didn't have any torch. [fol. 112] Is that the only reason you think it was burning?

(No answer.)

Q. What makes you say you are sure that light was burning before you left the locker room?

A. Well, if I didn't use the torch I couldn't have seen to put the rope on there.

Q. Well, maybe somebody else had a torch there.

A. No, there was no torch being used.

Q. But that is the reason you think the light must have been burning?

A. Yes; there was no other way I could have seen it.

Q. But you don't know who fixed the light?

A. No, I don't know that.

Q. And you don't know how it was fixed?

A. No.

Q. You don't know whether a bulb was replaced in or whether just the switch was thrown, do you?

A. No, it wasn't the switch was thrown. The bulb was replaced, I know that.

Q. How do you know that?

A. Because while I was down there, I don't know who it was that said it, but somebody said, 'Replace the bulb in that light', and I looked at the light when we had the torch down there and it wasn't burning. I looked up at the light.

Q. You could see the bulb?

A. Yes, when they shined the torch, I looked.

Q. It was black?

A. Yes.

Q. Later on it was lit?

A. Yes.

Q. But you didn't see anyone replace it?

A. No. I was helping Hust while that was going on. Some fellows came down afterwards.

[fol. 113] Q. By the way, were you an A. B. at that time?

A. Yes.

Q. You had been to sea before?

A. Yes, I had.

Q. How many voyages before this?

A. One trip before that.

Q. What ship?

A. George Clymer.

Q. The same ship that Mr. Nelson was on?

A. Yes. That was a Liberty, too.

Q. But Hust had not been on that ship, had he?

A. On the first one, the Clymer?

Q. Yes.

A. No, he hadn't.

Q. Now, you said you didn't know how long before the accident that chain had been removed, but you did say it had been taken up on deck for some sort of work up there?

A. Yes.

Q. How do you know that?

A. How do I know it had been taken up for some sort of work?

Q. Yes.

A. Well, the chain was up on deck after the accident, I know that.

Q. Do you know what it was doing there?

A. Well, it seems to me that we used it as a stopper on this towline when we took it up on board. When we lost the towline from the tug it seems we used the chain as a stopper on this heavy manila line, put a messenger, I think, to the line, used the chain as a stopper and pulled it up on deck. The chain was being used there some place on that line.

Q. On that second line?

A. On the heavy line, yes, the line we were being towed by.

Q. Well, your first line had parted, hadn't it?

[fol. 114] A. Yes.

Q. Then you had re-established connection with another tug or something with the second line; and the chain you mean was on the second line?

A. Well, the line was lost from the first tug, parted. We had taken it up on deck and passed it over to him.

Q. And that is the line the chain was on?

A. Yes.

Q. But you don't know who had done that?

A. Who had gotten the chain?

Q. Who had put the chain on that line; you don't know that?

A. No, I don't know that.

Q. Or who had ordered it; you don't know anything about that?

A. No.

Mr. Wood: That is all.

Redirect examination.

By Mr. Hicks:

Q. Mr. Torgerson, do you know that this chain we have been speaking of that was used on deck was the same chain that had formerly been used as a safety chain on the stanchions?

A. Yes.

Q. You know that to be the same chain?

A. Yes, because there was only one chain like that on the ship.

Q. And you assisted in that operation yourself, did you; that is, the use of the chain in connection with the towline, and so forth?

A. Yes, sir.

Q. Had you been in the locker room of this other Liberty ship that you had served on?

A. Yes.

Q. And did it have stanchions and a safety chain?

A. Yes.

Q. Had you been in that locker room on various occasions?

[fol. 115] A. Yes, I had.

Q. What is the fact as to whether or not the safety chain had always been maintained?

A. It was always there. It was never taken off.

Q. Who paid you your checks for your service on the ship?

A. Moore-McCormack.

* * * * * * *

Recross-examination.

By Mr. Wood:

Q. You say you were paid by check?

A. Yes.

Q. Seamen are usually paid their wages by cash?

A. When you are paid off you are paid by cash. Sometimes you get a check, instead of sending home your allotments.

Q. Did you make allotments?

A. Yes.

Q. To whom?

A. My mother; and the money always came to her by check from Moore-McCormack, and when we came to the final payoff, we got cash.

Q. When you were paid off the voyage, you drew it in money, didn't you?

A. Yes.

Q. And you didn't draw any checks at all?

A. No.

Q. The only checks that were ever paid were allotment checks to your mother, is that right?

A. Yes.

Q. Did you ever see those checks?

A. Yes; I seen the stubs of them and the envelope they came in.

Q. Where are those checks?

A. Well, the checks have been spent, but the stubs are still there and the envelopes are still there.

Q. Still where?

[fol. 116] A. At home.

Q. Did you sign Articles on the ship along with the rest of the crew at Vancouver, the way Mr. Nelson testified?

A. Yes, I did.

Q. Before a Shipping Commissioner, I suppose?

A. Yes, it was before a Shipping Commissioner.

Mr. Wood: That is all.

Redirect examination.

By Mr. Hicks:

Q. Mr. Torgerson, you were not present when Mr. Nelson gave his deposition, were you?

A. No, I was not.

Mr. Hicks: That is all.

(Witness excused.)"

* * * * * * *

[fol. 117] Portland, Oregon, Monday, May 15, 1944, Ten O'clock, A. M.

DONALD CAMERON, called as a witness in behalf of plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hicks:

Q. Your name is Donald Cameron?
A. Yes, sir.
Q. Where do you reside, Mr. Cameron?
A. In Portland.
Q. You are a Portland boy?
A. Yes.
Q. What is your age, please?
A. Twenty-six.
Q. Did you have occasion to ship aboard the S. S. Mark Hanna in October of 1942?
A. Yes.
Q. And were you a member of the crew of which Mr. Cecil Hust, the plaintiff in this case, was a member of the same crew aboard that vessel?
A. Yes.
Q. Where did you ship from, Mr. Cameron?
A. From Portland.
Q. And Mr. Hust, to your knowledge, shipped at the same time and under the same circumstances?
A. I think he did. I am not sure whether he shipped from Portland or not; I can't remember him as a member just then.
Q. What was your capacity aboard the vessel?
A. Ordinary seaman.
Q. And as an ordinary seaman, what were your duties?
A. Well, to work on deck and to stand lookouts steer, and general upkeep of anything on the deck.
[fol. 118] Q. Your duties then related specifically to the deck, is that correct?
A. Yes.
Q. And the maintenance of the deck facilities and that sort of thing?
A. Yes.

* * * * * * *

Q. Can you describe briefly what part of the vessel was affected by the torpedo?

A. Well, the torpedo struck in the No. 5 hatch, and the after end of the vessed was disabled. The engines were completely stopped, and it sort of went down at the stern and the bow went in the air.

* * * * * * *

Q. After that were the electric lighting facilities of the ship available; were the electric lights operating on the ship after that?

A. Yes, they were.

* * * * * * *

Q. During the eight-day period from the time of the torpedoing until your arrival at the Port of Spain, Trinidad, did the members of the crew perform their normal functions and operations as crew members aboard the ship?

A. The ones that were aboard did. Half of the crew abandoned ship during the night, and the remaining half—well, we sort of had to take over the duties that the other half left.

Q. Do you remember the incident in respect to which Mr. Hust, the plaintiff in this case, received certain injuries?

A. Yes, I do.

Q. Did you and Mr. Hust receive certain orders in respect to the moorage line?

A. Yes.

Q. Will you tell us what the orders were and who gave them, if you know?

A. Well, there was a tug standing by—I think there were two tugs, and they were switching lines, we were switching from one tug to the other, and they needed another mooring [fol. 119] line to send over to one of the tugs, so either the Captain or the Boatswain gave the order to go below—that is, up in the forepeak, to get the end of the mooring line and send up to them. I didn't know it was Mr. Hust at the time who was following me.

Q. Now, can you describe the mooring line to us? What kind of a line is it, how heavy is it, and so forth?

A. Well, it is an 8-inch manila line; it is just about that big around (indicating).

Q. You mean eight inches in diameter?

A. No, it would be eight inches completely around. The circumference is eight inches.

Q. Very heavy?

A. Yes, it is quite heavy.

Q. How long a line would it be, if you know?

A. It would be sixty fathoms. That is about 360 feet long.

Q. Would it be such that one man could handle it alone?

A. No.

Q. Could two men?

A. Two men could handle the end.

Q. And that was the towline that you and Mr. Hust were ordered to obtain from the locker room, is that correct?

A. Yes.

Q. And where was it you were ordered to procure the towline from?

A. In the forepeak.

Q. The forepeak; and you refer by that to the locker room?

A. Yes, it is a locker room.

Q. Are you familiar with that locker room?

A. Yes, I am.

Q. And had you been long familiar with it prior to the time you went down on the 17th of March to get the towline?

[fol. 120] A. Yes.

Q. In your duties as ordinary seaman did you have occasion from time to time to go into the locker room?

A. Yes.

Q. With what frequency would you go in there?

A. I would go in there at least every day or every two days, sometimes twice a day.

Q. What about the other members of the deck crew, would they have occasion to go in there from time to time with some frequency?

A. Yes, all of the deck department would be in there quite often.

Q. Will you describe the locker room to us? Give its dimensions, and the purpose for which it was used.

A. Well, this locker room was used to stow all the gear that we used on the deck, including mooring lines, paint, and everything we needed. It was,—oh, I should say about 25 feet long, and it came from the bow of the ship so it was sort of in—it was not a square shape.

Q. It was sort of the shape of the ship?

A. The shape of the bow of the ship, and it must have been about twenty feet wide, I would say. Then there was a lower forepeak, one down below that—another locker room where we also kept all of our stores, and that was slightly smaller.

Q. Would that be on the third deck, you are talking about now, the lower one?

A. Well, you could call it the third deck; there is a main deck and then what we call that boatswain's locker, and then the store-room below. It would be the third deck.

Q. Was the main locker room, the one we are concerned with here, partitioned off in any way?

A. Just aft of the locker room was a small carpenter shop. There was a partition between that and the carpenter shop.

[fol. 121] Q. And to get from the carpenter shop to the locker room, was it necessary to go across the locker room?

A. Yes, it was.

Q. And then there was a door leading into the carpenter shop?

A. Yes.

Q. Was there a hatchway or a hatch, an open hatch, in the locker room leading down to the third deck?

A. Yes, there was.

Q. Will you describe that for us?

A. Well, it is about eight feet square, I should say, eight or ten feet square, something like that—I don't know the exact measurement—six, eight or ten, somewhere around there, and it is guarded—it has no cover on it at all.

Q. It never does have?

A. It never does have a cover on it, no hatch cover at all; and there are four stanchions around, one on each corner, and there is ordinarily a chain led through these stanchions to prevent anyone from falling into the open hatch.

Q. These stanchions are upright steel bars, are they?

A. Yes, they are.

Q. Are they located on each of the four corners of the open hatch?

A. Yes, they are.

Q. About how high above the floor do the stanchions rise?

A. Oh, just about waist high, I would say, about three feet.

Q. And does the chain that goes about the top of the stanchions completely encircle the hatch?

A. Yes, it does.

Q. Now, in getting from the second deck or the locker room down to the third deck, how do you do that; do you climb over the safety chain and go down the ladder, or how do you do it?

A. No, it has a latch, just a snap that you unsnap, and [fol. 122] leave the chain alone, and then you go down the ladder. It is a vertical steel ladder.

Q. Then as you go down, you re-snap the chain, I take it, so that it always encircles the hatch?

A. You should, yes.

Q. What is the purpose, if you know, for the stanchions and the safety chain you have described around the top of the stanchions?

A. The purpose is just a safety device. It is for the purpose to keep anyone from falling in there or anything falling in there at all. It is just a safety device, is all it is.

Q. How far is it, if you know, from the locker room down to the third deck through the open hatchway that you have described?

A. Oh, I would say ten or twelve feet.

Q. Where is this open hatchway or hatch that you have described with reference to the vertical steel ladder leading down from the main deck?

A. Leading down from the main deck to the hatch?

Q. Yes.

A. It is about, I would say it is around ten feet aft of the first ladder.

Q. Then as I understand it, you would come down the steel ladder which runs vertically, straight up and down, and then you would have to walk across the floor of the locker room for a distance of about ten feet before you would come to the open hatch?

A. Yes.

Q. Is the locker room in its normal operation equipped with electric lights?

A. Yes, it is.

Q. And is there a switch for the lights?

A. Yes, there is.

Q. And those lights are similar to the lights we have in our homes, where you just turn a switch on and the light goes on?

A. Yes, they are; they are similar.

Q. Now tell us, Mr. Cameron, in your own way what you did when you proceeded to execute the order given [fol. 123] you by your superior officers to obtain the tow-line; state what you did.

A. Well, I proceeded to go down to the forepeak, down the ladder into the forepeak, and as I went down I tried the switch. I don't actually remember reaching over and trying the switch, but I know I did, because otherwise I wouldn't go down in the dark to work in a place where I could have light.

Q. Let us put it this way: were there lighting facilities available in the locker room at that time?

A. Do you mean, were they available?

Q. I mean, was there a light you could turn on?

A. Yes, as far as I know there was a light I could have turned on.

Q. Let us get that straight. Do you mean you could have turned the switch on at this time and gotten the light?

A. If I had turned on the switch and it was working, I could have gotten the light.

Q. Was the light working?

A. It wasn't working, no.

Q. But you can't actually remember distinctly whether you turned on the switch or not?

A. No, I don't actually remember putting my arm over, but the switch is located right near the ladder, so every time you go down, you turn on the switch. You don't go into a dark locker room like that.

Q. What would you say as to whether you did undertake to operate the switch? Give us your best recollection on that.

A. I remember I did.

Q. And there were no lights available?

A. No lights.

Q. As you proceeded into the locker room, what was the condition of visibility?

A. Poor. It was dark in there, and being familiar with the locker room, I knew where to go. I knew where the line was stored—I had helped store it—so I proceeded to go over to the line, to grab the end of the line. Do you [fol. 124] want me to tell the whole story?

Mr. Hicks: I want to interrupt the witness, if I can, your Honor. Dr. Tegart is in the courtroom and there are reasons of emergency why he should be put on and permitted to go as soon as possible, if counsel has no objection.

Mr. Wood: There is no objection.

The Court: Very well.

(Witness withdrawn.)

[fol. 125] Commander HAROLD C. JONES, called as a witness in behalf of plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hicks:

Q. Commander Jones, what is your official title with the Government?

A. U. S. Shipping Commissioner.

Q. And your office is down in the Failing Building in Portland?

A. Yes, sir.

Q. Commander, there has been some interest expressed here in the Shipping Articles with reference to the Mark Hanna, which sailed in March, 1942. Did you at my request and under subpoena bring the Articles with you?

A. I did.

Q. Those are the Articles which you have in your hand?

A. Yes.

Mr. Hicks: Which I ask to be marked for identification as Plaintiff's Exhibit 13.

(The Shipping Articles of the Mark Hanna were marked Plaintiff's Exhibit 13 for identification.)

Mr. Hicks: We offer Plaintiff's Exhibit 13 for Ident. in evidence. It may be stipulated that a copy may be substituted for the original, so that the records of the Government may be kept intact. Is that agreeable, Mr. Wood?

Mr. Wood: That is all right.

The Court: Very well. Are they offered in evidence?

Mr. Wood: I have no objection.

The Court: They will be received.

(The Shipping Articles, previously marked Plaintiff's Exhibit 13 for Ident., were received in evidence.)

Q. Now, the Articles contain the names of the crew members, do they not, Commander?

A. Yes.

[fol. 126] Q. And the name of the Captain of the Vessel?

A. Yes, sir, on the front.

Q. The Captain's name here is Henry Hoeppner. And he was the Master of this vessel, is that correct?

A. Yes.

Q. The address of Captain Hoeppner is given 200 Pine Street, San Francisco, care of Moore-McCormack Steamship Company. To your knowledge is 200 Pine Street the regular Pacific Coast office of Moore-McCormack Company?

A. Yes, sir.

Q. Have you known Captain Hoeppner for some time, Commander?

A. No, I don't remember him other than this—I did not, preside at the signing on of this ship, but I saw him around the office.

Mr. Hicks: No further questions.

Cross-examination:

By Mr. Wood:

Q. Commander Jones, you have been for many years Shipping Commissioner in this port, have you not?

A. That is right.

Q. And in this port during the war the office of Shipping Commissioner was merged with the Coast Guard?

A. That is right.

Q. You are still Commander in the Coast Guard, Shipping Commissioner at this port, in charge of those duties, are you not?

A. That is right.

Q. The duties of the Shipping Commissioner are prescribed by statute, are they not?

A. They are.

Q. And among other things, they are to preside over the signing of Articles between the Master of the ship and the crew, is that right?

A. That is correct.

Q. And to protect the rights of seamen, that is correct, is it not, part of your duties?

[fol. 127] A. That is right,—friend of the seamen.

Q. Friend of the seamen. And the Shipping Articles are by law the contract of employment between the Master of the ship and the crew for that voyage, are they not?

Mr. Hicks: We object to that as calling for a legal conclusion, your Honor.

The Court: Isn't that calling for a legal conclusion?

Mr. Wood: I don't think it is, but I will reframe the question.

Q. What is your understanding of what the Shipping Articles are, Commander?

A. Well, the Shipping Articles are a contract between the Master and the seamen of this ship.

Q. For their employment on that voyage?

A. Covering the terms and also the pay.

Q. And describing their rating on the ship?

A. That is right.

Q. The position they occupy.

A. It gives their Government numbers and certificates they hold to qualify them to do the work; it gives the next of kin; it gives the information concerning allotments to beneficiaries; it gives information as to the voyage; it gives the social security number; it gives everything that might be necessary——

Q. (interrupting) Well, everything that pertains to their employment on that ship is embodied in those articles, is it not?

A. No.

Q. What is not?

A. The union agreements.

Q. Oh, yes, but I mean between the individual and the Master?

A. That is right.

Q. The union agreements you refer to are general overall agreements between the Union and the War Shipping Administration?

A. That is right.

[fol. 128] Q. Covering general conditions of wages, and so forth, are they not?

A. Certain terms are covered in the working agreement that are not shown in the Shipping Articles.

Q. And those union agreements are between the War Shipping Administration and the unions?

A. I don't know just how that is, whether it is with the companies. I think it is with the companies, though, as I remember.

Q. You don't know that?

A. I think it is with the companies. I am not sure.

Q. These Shipping Articles are prescribed by statute, aren't they?

A. That is right, they are, the Federal Code.

Q. And you say you did not preside over the signing of these Articles, yourself?

A. No.

Q. But did one of your deputies?

A. Yes, sir, Harold Ball signed them.

Q. Is it the regular practice of your deputies and yourself when Shipping Articles are signed, that they are read aloud to the crew?

A. That is right.

Q. They have to be, don't they?

A. They have to be, by departments.

Q. By what?

A. Departments; deck department; when we get through with that, we call the engine department. Then we take the steward department, then we take the men that are not there at that time and read it to them separately as they sign.

Q. Now Mr. Hust was a fireman. Will you glance at the list of firemen there and indicate if his signature is there? [fol. 129] A. Yes, it shows on line 43, Cecil D. Hust. The information is given about him, his signature shows there, and also his next of kin.

The Reporter: Isn't it Cecil I. Hust?

Mr. Wood: Cecil I. Hust.

The Witness: Is it?

Mr. Wood: That is all.

Redirect examination.

By Mr. Hicks:

Q. Commander, just a few questions. Now, the functions of the United States Shipping Commissioner com-

manding vessels apply to a boat that is operated, we will say, by one of the steamship companies in its individual capacity, or whether it is operated under what is called in this proceeding the General Agency Agreement, is that correct? Stated otherwise, I suppose if I, myself, were operating a steamship company under my own name and I wanted to get a crew for the vessel, I would have to sign the crew on under the auspices of the Shipping Commissioner, would I not?

A. Not necessarily. If you were going coastwise, according to law you could sign on your own crew as Master of the ship.

Q. Yes, but I am assuming a situation such as the Mark Hanna, where you are going abroad.

A. Foreign articles, the procedure would be the same.

Q. It is the same even in peacetime as it is now in that respect?

A. No difference.

(Agreement between Sailors' Union of the Pacific and Steamship Companies was marked Plaintiff's Exhibit 14 for Identification.)

Q. You mentioned that the Articles do not embrace the entire agreement with respect to the employment of the crew, the Master's relation to them, and so forth, and you [fol. 130] referred to union agreements. I hand you Plaintiff's Exhibit 14 for Identification and ask you to state if that is one of the union agreements to which reference is made?

A. I would not know because we don't have anything to do with that part of it. We just simply know there are agreements because we hear them discussed, but they are not permitted to be in the office, nor are our men permitted to discuss them, because they don't come under our scope.

Q. You mentioned in the regular course it was your understanding that the union agreements are not signed by the War Shipping Administration or by any governmental agency, but are signed by the operator of the ship as the employer?

A. No; I said that was my impression.

Q. Your impression, yes. I hand you Plaintiff's Exhibit 14 for Identification and ask you to examine the first page

of it and state whether or not that confirms your impression or whether that renders any doubt in your mind——

Mr. Wood: (interrupting) Now I object to that, your Honor. The witness has clearly stated he merely has an impression.

Mr. Hicks: I will establish it otherwise, your Honor. That is all.

(Witness excused.)

(At this point a recess was taken until 2:00 P. M. of this day, Monday, May 15, 1944.)

[fol. 131] Portland, Oregon,
Monday, May 15, 1944,
Two o'clock P. M.

William G. Warwick, called as a witness in behalf of plaintiff, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hicks:

Q. Will you tell your full name, please?

A. William Gordon Warwick.

Q. Are you an official of the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association?

A. Yes, I am the Business Agent.

Q. I hand you Plaintiff's Exhibit 14 for Identification and ask if you are familiar with that printed contract?

A. Yes, I am familiar with it.

Q. What is that?

A. That is the agreement under which the Pacific Union sailors are employed on ships, collective bargaining agreement.

Q. What is the fact as to whether or not a copy of this agreement that you have just identified is furnished to each delegate aboard the ship?

A. That is right.

Q. And was that contract operative and in effect in the spring of 1943?

A. Yes, sir.

Q. Was the copy furnished to the delegate that served aboard the Mark Hanna?

A. Yes.

Q. Was this agreement operative and in effect and installed aboard the vessel in October, 1942, when the Mark Hanna sailed?

A. Yes, sir.

Questions by Mr. Wood:

Q. You testify—I am not doubting your word but I want [fol. 132] to understand things—that a copy of this agreement was aboard the ship when she sailed?

A. A copy of that is placed aboard every vessel.

Q. Every vessel that comes under the agreement?

A. That is, under the agreement with the operators that are signatory to that agreement.

Q. Does that also apply to War Shipping Administration vessels?

A. It applies to every vessel that comes under the agreement, that is signatory to that agreement.

Q. Well, I don't know whether that is an answer to my question. Is this placed on every War Shipping Administration vessel, for example, that sails out of this port?

A. Well, I don't understand the question, what you mean by War Shipping Administration vessels. They are all War Shipping Administration vessels. It is placed on every vessel.

Q. Well, some vessels are owned by the United States Maritime Commission and operated by the War Shipping Administration, and some are owned by private owners but they have been requisitioned by the War Shipping Administration.

A. That is right.

Q. So they are all, you might say, in the hands of the Government.

A. That is true.

Q. You mean this book is placed on every such ship?

A. It is placed on every such ship that is signatory to that agreement.

Mr. Wood: All right.

By Mr. Hicks:

Q. And it is this agreement that governs the union relationship on working conditions and that sort of thing as

between the company on the one hand and the union and its membership on the other?

A. That is right.

[fol. 133] Questions by Mr. Wood:

Q. I am not clear yet. Do you imply that there are some War Shipping Administration vessels which are not subject to the agreement?

A. Yes, that is true.

Q. What are those?

A. Those are vessels that come under different unions; like the National Maritime Union, which has headquarters on the Atlantic Coast might have companies signatory to their agreements which would operate vessels off this coast. They would not be a signatory to that agreement.

Q. I understand that. Some are under Atlantic Coast agreements and some under Pacific Coast agreements?

A. That is right.

Q. Do you place these aboard the ships, yourself?

A. Yes.

Q. Did you place one of these aboard the Mark Hanna?

A. I don't say I personally placed it on there. I gave it to one of the crew members who acts as a delegate for that vessel.

Q. Well, do I understand from that, that that vessel was under the Pacific Coast, and not the Atlantic Coast agreement?

A. That is right.

Q. Have you verified that from your records to refresh your memory, or are you just speaking from memory?

A. No, the S. S. Mark Hanna was under agreement to us. We furnished the crew for that purpose.

Q. Under the Pacific Coast agreement?

A. Pacific Coast Marine Firemen, yes.

(Agreement between Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association and Steamship Companies was marked Plaintiff's Exhibit 15 for Ident.)

[fol. 134] By Mr. Hicks:

Q. I hand you Plaintiff's Exhibit 15 for Ident., Mr. Warwick. Will you please identify that for us?

A. This is a collective bargaining agreement that governs all vessels under agreement with us, for the unlicensed engine room department.

Q. Was that operative in October, 1942 for the voyage of the Mark Hanna under the auspices of the Moore-McCormack Lines?

A. Yes, sir.

Q. And what you have said with respect to Plaintiff's Exhibit 14 would likewise apply to that, would it?

A. That is right.

Q. That is the union with respect to which you are the union representative, isn't it?

A. That is right.

Q. Is that the contract which governs the union relationships between the employer and the union and its membership?

A. That is right.

Q. On the voyage of the Mark Hanna which began in October, 1942 and ended in 1943?

A. Yes, sir.

Q. And I assume a copy of that was aboard the vessel?

A. Yes, sir.

Q. In the hands of the delegate?

A. Yes, sir.

Q. And the men were dispatched to the vessel by you?

A. Yes, sir.

Q. The men are furnished to the vessel upon request of whom?

A. By the steamship company operating the vessel.

Q. In this instance that would be whom?

A. Moore-McCormack Steamship Company.

[fol. 135] Questions by Mr. Wood:

Q. You mean they would telephone or send word down to your union to dispatch so many men to this ship?

A. They would telephone us, yes, as a rule.

Q. One of these agreements is for the Sailors Union and one for the Marine Firemen. Are you representing both these unions?

A. No, just the Marine Firemen.

Q. Then when you testified that you either personally or through your agent placed the Sailors Union agreement on the ship, were you stepping outside your functions?

A. No, not necessarily. Both organizations are in the same dispatching hall and we just work hand in glove, you might say, with each other.

By Mr. Hicks:

Q. Mr. Warwick, I call your attention to page 4 of Exhibit 15, and observe that the Moore-McCormack Lines, Inc., a corporation, is not named on there as signatory. Can you explain that to us, please?

Mr. Wood: Could you delay your answer until I see what he is asking you about?

Mr. Hicks: Yes. (indicating on the exhibit.)

Q. Do you understand my question?

A. Do you mean what company is referred to in this agreement?

Q. Yes. I notice specifically Moore-McCormack Lines is not named there as signatory to the agreement.

A. The reason for that, in Pacific Coast trade they operate under the name of the Pacific Republics Line; that is for Pacific Coast trade. On the Atlantic Coast they assume a different operating name.

Q. But the Pacific Republics Line for coastwise trade is Moore-McCormack Lines, is that correct?

A. Not for coastwise trade; for ships operating out of the Pacific Coast ports.

[fol. 136] Q. And I call your attention to page 3 of Plaintiff's Exhibit 14 and ask you to make observation concerning the designation there of Pacific Republics Line as Moore-McCormack Lines, Inc.

A. That is right. It is in parenthesis referred to as Moore-McCormack. Ours is just Pacific Republics Line.

Q. And during your experience as Business Representative of your union, and throughout 1943 the Moore-McCormack Lines, Inc., the defendant here, operated under that agreement that you just identified?

A. That is right.

Q. And you, as business representative, dispatched men to the ship upon call of Moore-McCormack Lines, Inc. for such men?

A. That is right.

Mr. Hicks: That is all.

Cross-examination.

By Mr. Wood:

Q. When you say Moore-McCormack Lines, Inc., operate under these agreements, just what do you mean by that?

A. Well, prior to the war every company on the Pacific Coast, that is, the majority of them, were under contract to the Pacific Coast Marine Firemen, of which Moore-McCormack was one, and for the duration of the war, in Washington, D. C. a practice policy was drawn up where the agreements would be frozen for the duration of the war, and all the operators that are signatory to that agreement would remain signatory for the duration, and various companies which we refer to as operators are the companies—the particular company that is operating that particular vessel.

Q. I have here that regulation you refer to, but I will let my friend get the rest of his agreements over first. You have just referred to that operation regulation—you said, [fol. 137] freezing these agreements. I will ask you to look at that and see if that is a copy of it (handing a document to the witness).

A. No, this is not familiar to me at all. We have nothing whatsoever to do with the War Shipping Administration. Ours is directly between the steamship company operating the vessel and the Union.

Q. What did you mean then by saying that the Government, when the war came on and the Government was assigning ships to these operators, what did you mean by saying that the Government had the operators freeze the agreements?

A. They didn't have the operators—the Government froze our collective bargaining agreements with the operators, so that they would remain intact for the duration of the war.

Q. How did the Government do that?

A. It was signed by the President of the United States as a memorandum signed to that effect.

Q. You don't know the exact mechanics that the Government went through to freeze these agreements, do you?

A. Only to the extent that the wages, working conditions, collective bargaining agreements—as far as freezing of the vessels themselves, I don't know. What I am talking about

now is the working conditions of the unlicensed personnel. When I am talking about freezing, I am talking about freezing their working conditions, their overtime rates, and collective bargaining agreements.

Q. I know that, but I say, you don't know what Government official signed the paper to carry that into effect?

A. The President of the United States signed it.

Q. You don't know that, do you?

A. Yes, I know it. I was notified to that effect from Washington, D. C.

Mr. Wood: That is all.

[fol. 138] Redirect examination.

By Mr. Hicks:

Q. Just one other question, Mr. Warwick. In supplying men to the ships—I am referring particularly to the Mark Hanna and other similar vessels—were your contracts with respect to hiring men, and so forth, at any time with the War Shipping Administration?

A. No. The only thing, if we don't have enough men in one particular case, we happen to run short, we call the War Shipping Administration for replacements. We ourselves call them. As far as anything else for the War Shipping Administration, we don't come in contact with them at all.

Q. If men should be supplied by the Government division, the War Shipping Administration, they would clear through the unions?

A. That is right, yes.

Q. But with respect to any questions that arise as to manning vessels, and so forth, you deal with Moore-McCormack, Inc., do you, rather than some representative of the War Shipping Administration?

A. We deal directly with the Moore McCormack Lines.

Q. That is always true?

A. That has always been the practice.

Mr. Hicks: That is all.

Recross-examination.

By Mr. Wood:

Q. Mr. Malone is the Secretary of your Union, isn't he?

A. He is, in San Francisco. Our main headquarters is in San Francisco.

Q. I know, but he is the Secretary, isn't he?
A. That is right, he is the Secretary.

Mr. Wood: That is all.

(Witness excused.)

[fol. 139] DONALD CAMERON, a witness in behalf of plaintiff, thereupon resumed the stand, and further testified, as follows:

Direct examination (continued).

By Mr. Hicks:

Mr. Hicks: Mr. Reporter, will you read the last question?

(The reporter read the last question and answer in the testimony of this witness, page 108 of this transcript.)

Q. Will you pick up the thread from there, Mr. Cameron, and continue on.

A. As soon as I reached the end of the line I heard a groan and a thud—I heard the thud and then the groan, and right away I knew what had happened, so I immediately hollered to the top deck for an emergency light so I could see what had happened, and it was some time—it was a few minutes before the emergency light arrived; and in the meantime some of the other crew, some of the rest of the crew had gone below in the dark down to where Mr. Hust was, and when they did bring the light, we could see what the situation was down there.

Q. Now you mentioned that it was dark in the locker room. I don't remember whether you said how dark it was. I wish you would clarify that for us.

A. It is pretty hard—coming in from the daylight it would be pretty hard to see in there unless you were familiar with it. It was what you would call dark, coming in from the daylight.

Q. Was there any light admitted down through the hatch from the first deck?

A. Not very much. The hatch was wide open but there are obstructions in the way that prevent the full effect of the light from coming into the locker room.

Q. What is the obstruction you speak of?

[fol. 140] A. Well, there is a V-shaped stanchion and the two hawse pipes that go down to hold the anchor against the bow of the ship. They are huge pipes and they obstruct the whole entrance practically.

Q. And that prevents, to some extent at least, the light coming down the hatch?

A. Yes, it does, very much.

Q. Do you remember what kind of a day this was?

A. I remember it was overcast; it was early in the morning, and it was overcast. It was quite a dreary day.

Q. Do you remember about what time of the day it occurred?

A. It was in the morning. It was early in the morning, that is all, I don't know the exact time.

Q. Now, to what point in the locker room had you reached when you heard the thud, the fall you described?

A. I had just reached the line, to where the line was stored. I had just gotten there, got to the line.

Q. Did you know who it was that was coming down behind you to assist in obtaining the mooring line?

A. No, I didn't know at the time. I did afterwards.

Q. Did you give any warning to the man that was behind you, that happened to be Mr. Hust?

A. No, I didn't.

Q. Will you tell us how it was that you didn't?

A. Well, only the deck department are the only ones that ever go in there, and naturally, when we started down, I thought that someone from the deck department was following me, because that was our work, but all hands were turned to, and I didn't stop to think that maybe some other member of the crew was following me that wasn't familiar with the locker room.

[fol. 141] Q. And you didn't know it was Mr. Hust that was joining you to execute the order until after he had fallen?

A. That is right, I didn't know who it was.

Q. Was the condition such that you could see the open hatch in the room?

A. Well, it would have been pretty hard to see, and to a stranger, they couldn't have seen it at all. I, myself, would have had to look pretty sharp to see it.

Q. Of course, you knew——

A. (interrupting) I knew exactly where it was.

Q. Did you know at the time you went down there that the safety chain had been removed from the stanchions?

A. Yes, I did.

Q. Can you tell us how long before, if you know, the safety chain had been removed?

A. No, I can't. I remember removing the chain—helping them remove the chain, but I don't remember whether it was the day before or two days before.

Q. You actually assisted in removing the chain?

A. I actually helped in removing the chain.

Q. Do you know who it was gave you the order to remove the chain?

A. Yes, I am pretty sure it was the Captain. He was on the forecastle head working with us all the time.

Q. Was any order given with respect to putting another chain or a rope as a safety guard around the stanchions?

A. No, there was not.

Q. Then to your knowledge after the chain was removed, nothing was placed there until after Mr. Hust had fallen down?

A. I know there was nothing placed there.

Q. And you don't know whether it was one day before or [fol. 142] two days, that the safety chain had been removed?

A. That is right, I don't know how many days.

Q. Have you been in the locker rooms of other Liberty vessels than the Mark Hanna?

A. Yes, since then.

Q. And are they all constructed to a standard pattern?

A. Yes, all very similar.

Q. And on the other vessels you observed, and referring to the locker rooms, were the safety chains installed upon the stanchions around the open hatch?

A. Always.

Q. Were there any ropes available in the locker room which could readily have been used as a safety chain—or to go around the stanchions?

A. Yes, there were.

Q. Was this order that you and Mr. Hust were executing—were you performing that work at any particular speed?

A. Well, as I remember, the tug was standing by and the whole work was more or less an emergency, and naturally we hurried to carry out the order, because those things must be done quite fast. I mean, the tug standing by, you

naturally would hurry. I don't think we were rushing about blindly, but we were hurrying.

Q. In receiving your pay for your wages, in what form were you paid, as a member of the crew of the Mark Hanna, during this period with which we are concerned?

A. How do you mean, in what form?

Q. In what form, were you paid in cash?

A. Yes, we were paid in cash.

Q. Was your cash or your currency contained in envelopes similar to those marked Plaintiff's Exhibit 2 (handing the exhibit to the witness)?

[fol. 143] A. Yes, just exactly; just like that.

Q. And in the payments that were made to you, were notations made on each of the envelopes as to the amount of deductions that were retained by the employer?

A. Yes.

Q. And that applied as to the Victory tax and S. S. tax?

A. Yes, it did.

Q. What is the S. S. tax?

A. Social security, I believe.

Q. Now, the Victory tax was retained by the employer, as I understand it, as a basis for supplying the Government a proportionate share of your tax due from your income, is that right?

A. Yes.

Q. Was that retained by the Moore-McCormack Company, to your knowledge?

A. That was. It was deducted from those envelopes. The deductions were right on.

Mr. Hicks: Will you mark this for identification?

(Statement of income tax withheld on wages was marked Plaintiff's Exhibit 16 for Identification.)

Q. Mr. Cameron, did you write a letter to the Moore-McCormack Lines in connection with your social security matters and income tax matters?

A. Yes. • • •

• • • • • • •

Q. Mr. Cameron, you mentioned receiving a letter from Moore-McCormack Lines, Inc. concerning the inquiry you made; is that correct?

A. Yes.

Q. Have you endeavored to find that letter?

A. I have tried.

Q. Did you destroy the letter, to your knowledge?

[fol. 144] A. I believe I did. I remember one day after I paid my taxes I was clearing everything up, you know, odds and ends laying around, and I believe I destroyed that letter, because it was right in with those papers, and I can't find any of the papers now. I destroyed everything but my receipts for the tax.

Q. Will you tell us what office of the Moore-McCormack Lines the letter was sent from?

A. New York.

Q. Do you remember distinctly the contents of the letter?

A. Well, I told you just about the exact words of the letter.

Q. Well, do you remember the contents of the letter specifically?

A. Not word for word.

Q. Well, do you feel you recollect it with accuracy?

A. Yes—The answer they gave to me?

Q. Yes.

A. Well, just a regular form, and it said, "You failed to furnish us with your social security number, by which all of our employees' accounts are—" I don't know what word they used there— "all of our employees' accounts are filed," is what it meant. It said, "If you will please forward this information, we will attend to the matter immediately."

Q. And did you forward the information?

A. Yes, I did.

Q. I hand you Plaintiff's Exhibit 16 for Identification and ask you to state what that is.

A. This is the statement of income tax withheld on my wages, they sent me after I sent them my social security number.

Q. That was sent you by Moore-McCormack Lines, Inc. in response to your letter to them?

A. Yes.

[fol. 145] Q. And this was received by you by mail?

A. Yes, sir, it was received by me, by mail.

Q. And that answered the question you inquired of them?

A. That is right.

Q. That was so you could pay your income tax and properly allocate your income?
A. Yes.

Mr. Hicks: We offer Plaintiff's Exhibit 16 in evidence, your Honor.
Mr. Wood: No objection.
The Court: It will be received.

(The statement of income tax withheld, previously marked Plaintiff's Exhibit 16 for Identification, was received in evidence.)

[fol. 146] Cecil I. Hust, the plaintiff, recalled as a witness in his own behalf, further testified as follows:

Direct examination.

By Mr. Hicks:

Q. Mr. Hust, were deductions made from your wages by Moore-McCormack Lines, Inc.?
A. Yes, sir.
Q. And were those deductions made with respect to every time you received payment from the company of your wages?
A. It was made in the final payoff.
Q. And the amounts were reported to you by the company on the envelopes in which you received the currency?
A. Yes, sir.
Q. Envelopes of the type shown by Plaintiff's Exhibit 2?
A. Yes, sir.

Mr. Hicks: That is all, Mr. Hust, thank you.

Cross-examination.

By Mr. Wood:

* * * * * * * *

Q. Now, about these Articles, these Ship's Articles, you understood when you signed them, did you not, that they were your contract of employment?
A. Yes, sir.

Mr. Wood: That is all.

Redirect examination.

By Mr. Hicks:

Q. Just one question there. What was it you say you understood about the Ship's Articles, Mr. Hust?

A. That they were the contract which we were to sail under.

[fol. 147] Q. Did you understand that the Articles constituted the whole contract between yourself, as a member of the crew——

A. (interrupting) No, sir.

Q. Did you know as a matter of fact, there are certain laws which go into the contract, which are operative as a matter of law?

A. Yes, sir.

Q. Did you know about the effect of any of your union agreements?

A. I knew our union agreement was also considered.

Q. Were you ever told by any member of the Moore-McCormack Lines, or any executive, anyone representing them, that you were other than an employee of that company?

A. No, sir.

Q. You understood you were such an employee?

A. Yes, sir.

Q. Mr. Hust, upon returning here to Portland, and in August, 1943, did you contact the Moore-McCormack Lines' local representative, Mr. Tripp?

A. Yes, sir.

Q. And did you report to Mr. Tripp that you had been injured aboard the Mark Hanna?

A. Yes, sir.

Mr. Hicks: Will you mark this, please?

(Letter from K. C. Tripp, Mgr. Moore-McCormack Lines, to Hust, dated August 24, 1943, with copy of letter from H. W. Dubbin to K. C. Tripp, and copy of letter Aug. 14, 1943 from War Shipping Administration to Moore-McCormack Lines, attached, was marked Plaintiff's Exhibit 17 for Identification.)

Q. What, if anything, did Mr. Tripp tell you with respect to the claim you made at that time?

A. He said the only thing he could do personally was to [fol. 148] to contact their office, San Francisco, I believe he said.

Q. Did he state that he would do that and later inform you?

A. Yes, sir.

Q. I hand you Plaintiff's Exhibit 17 for Identification and ask you to state what that is.

A. That is the letter I received from Mr. Tripp.

Q. Now, there are two enclosures, or two papers attached to the letter. Were those enclosed in the envelope with the letter? Examine them, please.

A. Yes, sir.

Q. And those are the documents which were sent you by Mr. Tripp, I take it, in response to the inquiry you made of him?

A. Yes, sir.

Q. Just one other question: Mr. Tripp, you knew him as the local Manager for the Moore-McCormack Lines, Inc., is that correct?

A. Yes, sir.

Q. And he was serving in that capacity at the time you presented your inquiry, is that correct?

A. Yes, sir.

Mr. Hicks: I guess we may stipulate he is still the local Manager.

Mr. Wood: The city Manager.

* * * * * * *

Recross examination.

By Mr. Wood:

Q. Mr. Hust, when you said a moment ago in answer to Mr. Hicks' questions, that you did not understand that the ship's Articles were the whole contract of employment, and that you understood the union agreements came into it, what part of the union agreements, or what terms or anything in them did you think came into this contract of employment of yours?

[fol. 149] A. By the union agreements?

Q. Yes.

A. Well, that has quite a bit to do with your agreements on the ships as far as living conditions and everything concerned with the ship, sailing at sea——

Mr. Hicks: (interrupting) Speak a little louder, please.

A. That has lot to do with the ship and the crew and the Master.

Q. What elements in this union agreement did you think formed a part of your contract of employment or affected it in any way?

A. I beg pardon?

Q. What part of those union agreements did you think affected your contract of employment under the ship's Articles?

Mr. Hicks: May I hand him the copy (handing exhibit to the witness)?

A. Well, there are different things that come up aboard a ship that is referred to the union agreement almost every day.

Q. Well, what are they?

A. Your living conditions, the food the company puts aboard the ship, the stewards put out to you, and the safety rules and regulations.

Q. Your wages are stipulated in the Articles, aren't they?

A. That is right.

Q. They are not in the union agreement?

A. No, sir.

Q. And the voyage is stipulated in the Articles?

A. Yes, sir.

Q. That is not in the union agreement?

A. No, sir, I don't think so.

Q. And the employment by the Master is stated in the Articles, isn't it?

A. Yes, sir.

Q. That is not in the union agreement?

A. No, sir.

Q. Well, have you stated everything you can think of in [fol. 150] the union agreement that affected this contract? You said living conditions, and conditions aboard the ship.

* * * * * * *

Q. I want to know if there is anything else in the union agreement other than you have stated, that you think affected your contract of employment.

A. Well, I don't know of anything, Mr. Wood.

Mr. Wood: Thank you.

A. I am not too familiar with the Articles. In fact, I don't believe I ever read them.

Q. They were read aloud to you. Let's see, I had one more question I wanted to ask you. You mentioned certain laws when Mr. Hicks questioned you, certain laws you had in mind as forming part of your contract of employment when you signed those ship's Articles. What law did you mean?

Mr. Hicks: I beg your pardon, Mr. Wood, either I misunderstood my own question or you misunderstood his answer. I asked if he understood there were certain laws which affected the relationships, as a matter of law, and everything contained in the Articles, to which he answered "Yes." Certainly I did not intend to ask, and I don't think he responded, in respect to any particular law.

Q. Was that your answer; you just knew there were some kind of laws that affected your contract?

A. Yes.

Q. But you didn't know what they were?

A. No, sir.

Mr. Wood: Thank you, very much.

(Witness excused.)

[fol. 151] OFFER OF EXHIBITS

Mr. Hicks: There are certain contracts, your Honor, we have stipulated may be later received, subject to Mr. Wood's same objection, and so forth.

Mr. Wood: Subject to objection.

Mr. Hicks: Subject to Mr. Wood's objection.

Mr. Wood: Except as to identification. I am not going to raise any question as to the identification.

Mr. Hicks: Yes, I understand. And reserving the right to offer those, subject to Mr. Wood's objection, we rest, your

Honor, seeking the opportunity to put those in more or less out of order, subject to appropriate objections.

Mr. Wood: No objection to that procedure.

(At this point a short recess was taken.)

Mr. Hicks: If the Court please, the contracts I mentioned in closing have now been obtained, and counsel concedes them.

(The agreements were marked Plaintiff's Exhibits 18, 19, and 20 for Identification.)

Mr. Hicks: We offer in evidence, your Honor, Plaintiff's Exhibits numbered 18, 19, and 20, and we offer the stipulation of counsel that these exhibits, which are union agreements with various unions which supply, and did supply, personnel to the Mark Hanna and other vessels similarly situated, are the agreements, and that they stand in relative and similar position, if not identical position, to the other agreements which have already gone in evidence. And it may be stipulated that the identification of the exhibits may be waived.

Mr. Wood: That is right.

The Court: Your others have not been offered. Those identified by Mr. Warwick have not been offered.

Mr. Hicks: I thought they had, your Honor. I will offer them with the others at this time.

Mr. Wood: I have no objection other than the formal one, [fol. 152] I think they are incompetent and irrelevant.

The Court: You offer no objection to the mode of identification?

Mr. Wood: No.

The Court: But you object to their being in evidence.

Mr. Wood: I think they are irrelevant and immaterial to the issues.

The Court: Very well; they will be received, subject to the objections.

(Agreements between Sailors' Union of the Pacific and Steamship Companies, and between Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association and Steamship Companies, previously marked for identification, were received in evidence marked Plaintiff's Exhibits 14 and 15.)

(Agreement between Marine Engineers' Beneficial Ass'n. and Pacific American Shipowners Association was received in evidence, marked Plaintiff's Exhibit 18.

Agreement between Marine Cooks & Stewards' Ass'n. of the Pacific Coast and Steamship Companies was received in evidence, marked Plaintiff's Exhibit 19.

Agreement between Master, Mates & Pilots of America and Steamship Companies was received in evidence, marked Plaintiff's Exhibit 20.)

Mr. Hicks: We rest, your Honor.

Plaintiff rests.

[fol. 153] DEFENDANT'S EVIDENCE

K. C. TRIPP, called as a witness in behalf of defendant, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Wood:

Q. Mr. Tripp, you reside in Portland at the present time, do you not?
A. Yes, sir.
Q. What is your occupation here?
A. Manager of Moore-McCormack Lines in Portland.
Q. Local manager here in Portland for that company?
A. Yes.
Q. How long have you occupied that position here in Portland, Mr. Tripp?
A. Since October 21, 1942.

Mr. Wood: I will have this marked for identification.

(Service Agreement (GAA 4-4-42) between the War Shipping Administration and Moore-McCormack Lines, Inc., was marked Defendant's Exhibit 21 for Identification.)

Q. I hand you a paper, Mr. Tripp, that has been marked by the clerk Defendant's Exhibit 21 for Identification, and ask you please to state what it is,—that is all, just identify it (handing the document to the witness).

A. This is a service agreement made between the War Shipping Administration and Moore-McCormack Lines, Inc., for the operation of such vessels as are allocated to our company to operate on behalf of the War Shipping Administration.

Q. And was the Mark Hanna one of the vessels that was so allocated to you?

A. It was, sir.

Q. Under that agreement.

A. That is correct.

Q. And to be specific, at the time the Mark Hanna sailed [fol. 154] out of here with Mr. Hust aboard as a fireman, this was the agreement that governed your relations to that ship and to the War Shipping Administration, is it?

A. That is correct.

Mr. Wood: I offer the agreement in evidence.

Mr. Hicks: No objection to it being received.

The Court: It will be received.

(The Service Agreement (GAA 4-4-42) between the War Shipping Administration and Moore-McCormack Lines, previously marked Defendant's Exhibit 21 for Identification, was received in evidence.)

Q. Mr. Tripp, I wish you would in a few brief words, without too much detail, explain what is the duty of the agent under this agreement, and particularly what is meant by the phrase, "conducting the business of the vessel" for the War Shipping Administration.

Mr. Hicks: Your Honor, I assume the purpose of the question is to ask Mr. Tripp to place a construction upon the legal effect of the——

Mr. Wood: (interrupting) No, it is not. The contract speaks for itself. I don't care,—I thought you were going to ask the same question.

Q. I was going to ask you, and intended to ask you, Mr. Tripp, as a matter of practice under that agreement, what does your company do?

Mr. Hicks: That is all right. We withdraw the objection.

A. We represent the vessel as the normal business agent, attending to all such matters that the Master, the Captain——

Q. (interrupting) Now, this jury isn't a lot of seamen. Who do you mean by the Master?

A. The Master, or the Captain, as I was explaining, might wish done. Those matters concern the employment of a crew, the carrying of stores for the deck, the engine, and the steward's departments, the docking of his vessel. When it is our duty to assist him in the loading of the vessel, we accept his instructions as to the method he wants the vessel loaded, how, when, and where. If we are representing the vessel so far as the cargo is concerned, we would [fol. 155] execute bills of lading on behalf of the War Shipping Administration in general, but the Master in particular. The bills of lading all have the Master's signature, and we act in most cases as his agent.

Q. Who collects the money due for carrying cargoes of the ship; who collects the freights?

A. We, as agent, if there were any moneys collected. Of course, there are no moneys collected at the present time. That is being done through accounting, and our entire procedure is accounting today. But if we were required—and there have been instances where freight money has been collected—we would collect it for the account of the War Shipping Administration, making a direct accounting to them, over the Master's signature, of course, for whatever money we receive or whatever moneys we pay out.

Q. Let me ask you, the War Shipping Administration prescribes a special form of accounting for you, does it not?

A. On all types of fiscal arrangements, either money received or money paid out for them. There are many such forms. We are strictly an accounting office today; under the operation of these vessels for the War Shipping Administration, it is practically all accounting.

Q. Why did you say that seldom nowadays are any moneys collected for freights? You said it was all a matter of accounting.

A. There are many military cargoes carried, Mr. Wood. The arrangement of freight money is a private arrangement within the War Shipping Administration and the military organization involved. It may be the Army or the Navy, principally the Army and Navy, sometimes the Air Corps. There have been cases in some of these vessels where certain types of Lend Lease cargo, or what is called a commercial cargo at the present time—it differs slightly

from Lend Lease—but where, through the Board of Economic Warfare, certain cargo is either permitted to be sent out of this country, or received into this country, in other words, exported when it goes out, and imported when it [fol. 156] comes back, and there are collections that are made for that, and, of course, we must in turn report that to the War Shipping Administration, through the proper auditor's office.

Q. You do then, as agent, handle the cargo business of the ship?

A. Yes, sir.

Q. It may be for the Army or the Navy, or for some Lend Lease or something else?

A. That is true, and whatever our disbursements may be—I might add to that for the benefit of the ary—the furnishing of stores, as we call it—it is commonly called storing a vessel——

Q. (interrupting) Now, just what does that mean? These are landsmen.

A. I am reaching that point. When we furnish materials, for instance, for the steward's department, foodstuffs for the ship, we buy locally here and furnish the supplier, or the vendor, people who sell that merchandise, a requisition. When they furnish an invoice, the invoice must be sent by the Master, a delivery receipt for that merchandise must be signed for, by either the Master or the Chief Officer, who certify that that material has been received aboard the vessel, and in turn, when we pay for that, we must then turn those bills over to the War Shipping Administration, who reimburse our account.

Q. Then when you speak of supplying a vessel, you mean the food put aboard her, the linen that is put aboard for the crew?

A. That is correct.

Q. Or the extra rope or chains, whatever has to be put aboard, you would put that aboard, that is, supplying it, and you pay out the money for that and are reimbursed by the War Shipping Administration?

A. That is correct. We receive those requisitions either from the deck department, the steward's department, or the engine department.

Q. You said, I believe, you were concerned with the employment of the crew. Just what do you mean by that?

A. Well, the Master calls upon us for such crew mem-

[fol. 157] bers as he wished to have, and because of our familiarity in this port or any port that we would be located, as an agent, we look to the proper union hall for those particular members and send them to the vessel, where the Master accepts them or rejects them, as the case may be. After we ask those men, for the Master, to go to the vessel, we have no further interest in them, whether he accepts them or rejects them. He signs them on down there.

Q. Is that what you mean—I used the phrase in the agreement, itself, by "procuring crews for the vessel"?

A. That is correct. That is the common phrase. We procure the stores, we procure any and all services; we procure his crew members, at the Master's direction, of course.

Q. Yes. It says, "The general Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel." That is what you are referring to?

A. That is correct.

Q. Some slips of paper have been introduced here by the plaintiff. I pick up Plaintiff's Exhibit 2; they appear to be pay envelopes that Mr. Hust said he received his cash pay in from the purser, and on the top of those you notice the name "Moore-McCormack, Inc." is printed, without any designation as agent, or without any reference to the War Shipping Administration. Can you explain how that came about?

A. Yes, I think I can answer that satisfactorily. At the time the war broke out, and all of the vessels then operated by our line, or any line, were requisitioned and taken over by the United States Government and directly controlled by the War Shipping Administration as the operating agent of the Government; we necessarily used available stationery and slips and vouchers of this nature, for the obvious advantage of having something that was normally used; but for all of these expenses we received our money back from the War Shipping Administration in due course. We have, no doubt, a great deal of other stationery we use in the operation. It does not specifically have any other designation, but it is a saving of money; and there is a [fol. 158] question, of course, whether or not the additional printing would serve any purpose, or even be reimbursable by the War Shipping Administration.

Q. As a matter of economy, then, you had some stationery on hand and you used it?

A. That is correct. These are bought in tremendous quantities.

Q. I will show you two more things, Plaintiff's Exhibit 16, a social security slip, and a crew pass and muster card, Plaintiff's Exhibit 1. You notice the same thing, Moore-McCormack name is on there.

A. That is right.

Q. And nothing more. Does the same explanation apply to this?

A. That is quite true. As agents, we are looking after some twenty-eight thousand people, and when you have twenty-eight thousand people to deal with, the volume of supplies is great, and those things are bought in quantities, and of course, they are carried over. When anything runs out——

Q. (Interrupting.) In other words, you had them all on hand when you took these ships over?

A. Yes, sir. We buy in tremendous quantities, we must buy in tremendous quantities, and there is a great deal of that stationery. Otherwise, it is on hand, and there doesn't seem to be any more money than we are constantly spending for this sort of thing.

Mr. Wood: You may cross-examine.

Cross-examination.

By Mr. Hicks:

Q. Mr. Tripp, referring to the exhibit Plaintiff's No. 16, you heard the young man testify this was supplied to him in March, 1944, didn't you?

A. That is right.

Q. And supplied to him through the New York office of your company?

A. That is correct.

Q. And you don't question that at all, do you? Do you want to examine it closely?

A. I have seen it, sir.

[fol. 159] Q. Now, do you have information from the New York office that these matters were held over from 1941 and they were simply filled out to avoid the matter of further printing costs?

A. Yes, I have no doubt—we were just——

Q. (Interrupting.) Now answer my question. Do you have information *to* that regard?

A. Not definitely about this, but I am generally familiar with the supplies we have.

Q. Do you have any information at all as to the amount of these particular items that were on hand in December, 1941, this form of notice (indicating)?

A. No.

Q. You haven't. You don't know but what that might have been printed late in 1943 or early in 1944; you have no way of knowing, do you?

A. No.

Mr. Hicks: May I have the original file, your Honor, the original Answer?

Q. Mr. Tripp, the original Answer in this case contains your verification, in which you say, "I, K. C. Tripp" and so forth, "say, I am the District Agent, and the foregoing Answer is true." Do you recognize your signature there (indicating)?

A. Yes, sir.

Q. And you read this before you verified it, Mr. Tripp, and you are familiar with the contents?

A. I will have to read it again to familiarize myself with it.

Q. Maybe you had better familiarize yourself with it, because I want to ask you some questions about it (handing the Answer to the witness). It is alleged in paragraph I that the Moore-McCormack Lines "admits that at the time of the accident alleged, it was operating the Liberty ship S. S. MARK HANNA for and on behalf of the United States of America, representing the War Shipping Administration, under a written agency agreement prescribing and limiting the duties, authority, and functions of this [fol. 160] defendant." And it is alleged in paragraph III, Mr. Tripp, as you will recall, that the plaintiff, Mr. Hust, was not in the employment of the defendant, Moore-McCormack Lines. Now I ask you this: it was by virtue of the general Agency Agreement which has just been received in evidence that you predicated that part of the Answer, is that correct?

A. That is correct.

Q. The general Agency Agreement. Now, you are the District Manager for the Moore-McCormack Lines, is that correct?

A. That is correct.

Q. Do you serve in any executive capacity with the corporation, aside from District Manager?

A. No, I do not.

Q. From whom do you receive your pay; are you paid by the Moore-McCormack Lines, Inc., or by the United States Government?

A. I receive my pay from the Moore-McCormack Lines. I don't know how they are reimbursed.

Q. This General Agency Agreement is not the whole agreement with respect to the operation of the vessels by the Moore McCormack Lines, is it; is there anything in this agreement concerning compensation that the Moore-McCormack Lines receives for operating the vessel as general agents?

Mr. Wood: That is subject to the decision of the War Shipping Administration, I think.

Q. Maybe you can tell us what the basis of compensation is.

A. I don't think I could.

Q. It is cost plus, isn't it?

Mr. Wood: I object to this testimony, and the agreement will speak for itself. I believe that refers to fiscal regulations, which are available at the War Shipping Administration.

Q. Well, you have seen the agreement, haven't you?

Mr. Wood: I object to the question. The agreement speaks for itself.

The Court: Is this a matter going outside the agreement? [fol. 161] Mr. Hicks: Yes, but Mr. Wood developed the methods of operation under the agreement. I want to go on further and find out how the gentlemen operate under the agreement. That is my question, and I assume he knows the answer. I am asking specifically how his company is reimbursed, and that is not within the purview of this contract, at least, it is not contained in the instrument.

Q. It is cost plus, is it not?

Mr. Wood: I object to that as immaterial.

The Court: As to how they are reimbursed, you may answer that, if you know.

A. Your Honor, I don't specifically have the details; but that is prescribed by fiscal regulations. How our company is reimbursed is—I don't know just how to answer that in connection with a vessel. I know what the reimbursement is for expenses to a vessel. But when counsel inquires as to the compensation of our company, that is something I can't answer at this time without referring to other regulations of the War Shipping Administration.

Q. Could you go this far, Mr. Tripp, and state whether or not, to your knowledge, these boats are operated, as general agents, on a fee basis payable to the Moore-McCormack Lines?

A. I don't believe I can give a very intelligent answer to that, because I would have to look at the fiscal regulations. Those are available, but I could not give you that exactly. I know how our expenses are reimbursed for outlays for the vessel, but so far as the company is concerned, I would have to look that up.

Mr. Wood: If your Honor please, this is purely a question of whether this plaintiff was employed by this company or the United States Government. How this company may be reimbursed or paid for its services is certainly without the issues in this case, and I object to this line of testimony, and all of it.

The Court: Well, the witness has stated that he doesn't know.

Mr. Wood: I object to the question. Don't answer unless [fol. 162] the Court instructs you to.

The Court: The question has been answered. The Court's impression was, the witness stated he could not answer from the information he had. I was of the impression he had to look through the contract to see if there was something in the contract that would clarify the situation.

Mr. Wood: The contract speaks for itself, your Honor,—not from this witness' mouth.

The Court: We are just allowing the witness time to look at the contract.

Q. I believe you testified that you are an agent of the Moore-McCormack Company and not of the War Shipping

Administration. You get your orders and directions from Moore-McCormack Lines executives, do you not?

A. That is correct.

Q. And they pay you?

A. That is correct.

Q. Now, clause (c) of Article 3A—will you take the contract, please—provides that Moore-McCormack Lines shall "equip, victual, supply and maintain the vessels," and so forth. Now, who is it that buys the supplies, maintains them and arranges for their delivery aboard the vessel,—supposing the vessel is in the home port here?

A. We make the purchases for the Master.

Q. Yes, and you assist in that behalf, yourself, do you?

A. Oh, yes.

Q. And if a vessel is under state of repair in the home port, do you, as the local manager, arrange for those repairs?

A. No, we do not.

Q. Who does that?

A. The War Shipping Administration has a department that takes care of that. It is called the M. & R., or Maintenance and Repair Division of the War Shipping Administration. They take care of that.

Q. Your company then supplies the vessel but you do not maintain the vessel, is that correct? As General Agents [fol. 163] you do not maintain the vessels in a state of repair?

A. For our account, or for whose account, sir?

Q. Well, I am trying to get a segregation here between the duties which the Moore-McCormack employees perform and those which, as you claim, the employees of the War Shipping Administration perform.

A. No, it is the duty of the Master and it is the Master's obligation to properly navigate his vessel and properly manage his vessel, keep his vessel in repair, for the account of his principal, which is the War Shipping Administration.

Q. Yes, but as I understand it from reading the contract—and you correct me if I am in error—it is the express obligation of Moore-McCormack Lines to victual, equip, maintain and supply the vessel.

Mr. Wood: Let me see that section. Well, you don't read the whole sentence.

Q. He has it before him. It is subparagraph (c), "subject to such directions, orders, regulations and methods of supervision and inspection as the United States may from time to time prescribe."

A. That is correct, and those orders come from the Master.

Q. Now you have shown, if I follow you correctly, that the General Agent, that is, the employees of the Moore-McCormack Lines, arrange for the supplies and deliver them aboard the vessel. That is correct, isn't it?

A. That is correct.

Q. Now, the same paragraph of the agreement says: the Moore-McCormack company shall maintain the vessels, and then you say that the War Shipping Administration has some kind of a service that maintains it in respect to repairs. Now, what, if anything, do you or other officials similarly situated do with regard to the repair of the vessels and the maintenance of the vessels?

A. The maintenance of the vessel while at sea, of course, is taken care of by the Master and the crew. You understand that. When the vessel is in port, the War Shipping Administration takes care of that work. They have their supervisors, surveyors, go aboard and assist the Master in [fol. 164] whatever may be required, in view of the ownership of the vessel being in the name of the United States Government, operated by the War Shipping Administration.

Q. All right, now refer——

Mr. Wood (interrupting): Are you going to be some little time?

Mr. Hicks: I will be some little time.

Mr. Wood: I promised Dr. Smith he could testify at four o'clock.

Mr. Hicks: That is perfectly all right. We have no objection.

Mr. Wood: Then will you step aside, Mr. Tripp? I want to call another witness for a moment.

(Witness withdrawn.)

[fol. 165] K. C. TRIPP, a witness in behalf of defendant, resumed the stand, and further testified as follows:

Cross-examination (continued).

By Mr. Hicks:

Q. Refer to Article 7, will you, Mr. Tripp? (referring to Defendant's Exhibit 21 for Ident.). We discussed the matter of reimbursement of the Moore-McCormack Company under the contract, and I believe you testified that the usual procedure there was for the company to pay out money and keep strict account of it, through accounting methods, and then the Government would reimburse the company for the amounts so expended; is that correct?

A: Yes. We were speaking specifically of the vessel.

Q. Yes.

A. That is right.

Q. Reimbursement there is made "*excepting* general and administrative expense (as presently itemized in General Order)" number so and so. Could you give us just roughly a few of those administrative expenses referred to, in respect to which no reimbursement is made?

A. That I can't do, counsel. I would have to have someone from our accounting department do that, and we don't have anyone here that can give it, and I am not familiar with that at all.

Q. Now, as I understand this language of Article 7, it is provided: "any other expenses which are not directly and exclusively applicable to the maintenance, management, operation or the conduct of the business of the vessels hereunder," that as to those matters, in the operation of the agreement the company is reimbursed by the Government; is that correct?

Mr. Wood: No, that is wrong. That comes under the exception.

Mr. Hicks: That is what I was wondering. It is most ambiguous.

Q. Mr. Tripp, in administering this agreement as you are called upon to do, I will ask you whether your company is reimbursed for maintenance, management, operation, or the conduct of the business of the vessel, under clause 7 [fol. 166] of the agreement?

Mr. Wood: I think it is only fair to the witness to say, he has just said, himself, he has nothing to do with the fiscal arrangements. Now, if he doesn't know how to answer, I think he should say so.

Mr. Hicks: I would be glad to accept Mr. Wood's statement, if he knows. I understood him to say a moment ago there was no reimbursement for those features, and if he will say so, I will drop it.

The Court: If you know, you may answer.

A. As far as the company in concerned, I am not familiar with it. I am not qualified to give you an answer on that. I am not familiar with it. I know about the expenses of the vessel because that is something that whenever we have one, we are in daily contact with. But so far as the company's relationship, I am not familiar with that at all. I haven't any experience with that, I am not informed.

Q. I see. Now possibly you are with this clause of the contract to which I am now going to call your attention. I read on down further in Article 7, from which I quote: "To the extent not recovered from insurance, the United States shall also reimburse the General Agent for all crew expenditures * * * including, without limitation, all disbursements for or on account of wages, extra compensation, overtime," and various items, "maintenance, cure, vacation allowances, damages or compensation for death or personal injury or illness * * *." Now, you are familiar with the operation of that clause of the agreement, aren't you, Mr. Tripp?

A. Not the interpretation of it, no.

Q. Well, these seamen who are injured come to you for counsel and for administrations in respect to their injuries, don't they, aboard your vessels?

A. Whenever they do in this port, I always have to refer it to our office on the Coast, who is more familiar with it than I am. I have very little of it here.

Q. You refer to your office on the Coast. Tell us who that is.

A. The San Francisco office.

[fol. 167] Q. And who is the man you refer it to?

A. Well, we have two or three in operation of the vessels who are familiar with these matters.

* * * * * * *

Q. Mr. Tripp, I hand you Plaintiff's Exhibit 17 for Identification and ask you to state if that is your signature, and if that is your letter, and whether you wrote that letter.

A. Yes, I did.

Q. Do you remember the circumstances under which you wrote the letter?

A. This was an inquiry by Mr. Hust for certain information from time to time, and this is one of the replies I received from our San Francisco office, which I passed on to Mr. Hust for his information.

Q. And with the letter you made two enclosures, which are attached to and part of Plaintiff's Exhibit 17?

A. That is correct.

Q. And you sent that to him in response to an inquiry that he made of you, representing your company, is that correct?

A. Yes.

Mr. Hicks: Now, if the Court please, we offer in evidence plaintiff's Exhibit 17 for Identification.

* * * * * * *

[fol. 168] Portland, Oregon, Tuesday, May 16, 1944, 9:45 o'clock, A.M.

(The following proceedings were had in chambers, outside the hearing of the jury):

Mr. Wood: Defendant objects to the admission of Plaintiff's Exhibit 17 for Identification for the reason that it is incompetent, irrelevant, and immaterial, and has no bearing on the issues, and particularly because it is full of references to insurance and underwriters, and therefore prejudicial if allowed to go before the jury; and I can't see that it adds anything, your Honor, to the case. If, for example, the purpose of it is to show that this defendant, as an agent, handled claims and settled claims of seamen, we admit that. That is part of the Agent's duties. But otherwise, what purpose there can be in it, I don't know, except the sinister one of insurance and underwriters I mentioned.

* * * * * * *

The Court: I will receive this in evidence.

Mr. Wood: We will take an exception, your Honor.

(Proceedings were thereupon resumed in the courtroom, as follows):

* * * * * * *

Mr. Hicks: Now we renew our offer, your Honor.

The Court: Very well; the Court will receive the exhibit. Exception allowed.

Mr. Wood: Objected to for the reasons already stated in the record, incompetent, irrelevant, immaterial, and decidedly prejudicial.

(Letter from K. C. Tripp, Mgr. Moore-McCormack Lines, to Hust, dated August 24, 1943, with copy of letter from H. W. Dubbin to K. C. Tripp, and copy of letter Aug. 14, 1943 from War Shipping Administration to Moore-McCormack Lines attached, previously marked for identification, was received in evidence marked Plaintiff's Exhibit 17.)

* * * * * * *

[fol. 169] Redirect examination.

By Mr. Wood:

Q. Mr. Tripp, Mr. Dubbin, who has been referred to as the Claims Agent of your Company, who signed those letters of which copies have been introduced, he is the Claims Agent of your company in San Francisco?

A. Yes, sir.

Q. But in handling this claim he was handling it as part of your agent's duties on behalf of the Government, was he not?

Mr. Hicks: We object to that, your Honor, as drawing for a conclusion of the witness. The document itself shows on what basis he handled it.

The Court: Doesn't that call for a conclusion of the witness?

Mr. Wood: I don't think so, your Honor. He knows what the practice is, about how Mr. Dubbin handles the claims.

The Court: No. The Court will sustain the objection.

Mr. Wood: I will reframe the question.

Q. Mr. Tripp, under the service agreement which is in evidence is it the duty of your company to handle claims of this sort on behalf of the War Shipping Administration?

A. Yes, Mr. Wood; all of our activities are of the same nature.

Q. In fact——

Mr. Hicks: (interrupting) Wait a minute. May I interpose an objection? If the company has a duty to do certain things on behalf of the War Shipping Administration, it should be pointed out in the written contract, so that we can know the basis under which the duty arises.

Mr. Wood: Where is that letter? In fact, I would like to show you your own letter, to which the Dubbin letter is attached, and ask you to read to the jury how it is signed, the full signature (handing the letter to counsel).

Mr. Hicks: I read that to the jury.

Mr. Wood: I know you did. I might read it two or three times. How is it signed?

[fol. 170] A. It is signed Moore-McCormack Lines, Inc., Agents for the United States of America, War Shipping Adminstration.

Q. Exactly. By you?

A. By myself, as local Manager.

Q. So that in handling this claim, you were handling it on behalf of the War Shipping Administration?

A. That is correct.

Q. Part of your Agent's duties to do it?

A. That is correct.

* * * * * * *

OFFER OF EXHIBITS

Mr. Wood: I offer in evidence War Shipping Administration Operations Regulation No. 1 and ask to have it marked for identification.

Mr. Green: No objection.

The Court: It will be received in evidence. You state you are offering it in evidence now?

Mr. Wood: Yes, I am offering it now.

(Operations Regulation No. 1 of War Shipping Administration, dated May 25, 1942, was received in evidence, marked Defendant's Exhibit 25.)

Mr. Wood: And I offer in evidence pages 7561 and 7562 of the Federal Register of Friday, September 25, 1942, commencing with the words, "Part 306," near the bottom of the last column on page 7561 and ending with the words "shall be as follows" about two-thirds down the first column on page 7562. I would like to declare that these were obtained from the Library of the Federal Court and must be returned there, and I have had them copied and would like to substitute copies.

Mr. Hicks: We have no objection to that. I would like to see the items.

Mr. Wood: I have marked them (handing the document [fol. 171] to Mr. Hicks). While they are looking at that I will offer the other one. Shall I go ahead and offer the other one?

Mr. Hicks: Yes.

Mr. Wood: I also offer page 6583, the last column, of the Federal Register of Wednesday, August 19th, 1943, Section 306.3, defining General Agents under the agreement here in question. And I would also like to substitute a copy.

The Court: Have you the copy prepared?

Mr. Wood: Yes.

The Court: Have you any objection to that?

Mr. Hicks: I would like to look at it. (Counsel perused the document.) It is all right. It may go in.

The Court: You say it may go in?

Mr. Hicks: Yes; no objection.

The Court: Very well, it will be received, with leave to substitute the copy.

(Copy of Federal Register, September 25, 1942, pages 7561 and 7562, "Part 306—General Agents and Agents," was received in evidence, marked Defendant's Exhibit 26. Copy of Federal Register, August 19, 1942, page 6583, Par. 306.3, "General agents defined," was received in evidence, marked Defendant's Exhibit 27.)

(Discussion between counsel.)

Mr. Wood: And it is stipulated between counsel that in the Federal Register of Friday, September 25, 1942, on page 7562, following the part that I offered in evidence, the whole service Agreement that is in issue here in this case is printed in full, in the Federal Register.

Mr. Hicks: We will so stipulate.

The Court: The record will so show.

[fol. 172] Mr. Wood: I am going to ask Mr. Tripp to take the stand once more. I am going to ask him that question about claims in a different form.

K. C. TRIPP, a witness in behalf of defendant, resumed the stand and further testified as follows:

Redirect examination.

By Mr. Wood:

Q. Mr. Tripp, referring again to this letter and Mr. Dubbin's letter attached to this, I will just ask you this: Under this service agreement has it been always and is it now the practice of the General Agent to handle on behalf of the War Shipping Administration claims of the character involved in this case?

. . . . . .

A. We handle all claims, cargo claims as well as claims of the nature involved in this case, on behalf of the War Shipping Administration. That is our duty.

Mr. Wood: That is all.

Recross-examination.

By Mr. Hicks:

Q. One other question: When you so handle them, those claims which are styled as handled by your company as agents for the War Shipping Administration, you so record on the letters or documents, do you not? I notice your leter was so written, the one received in evidence. Is that right?

A. I don't just get your question.

Q. Stating it another way, Mr. Dubbin is the Claims Agent for the Moore-McCormack Lines, is he not?

A. That is correct.

Q. And the letters you received from Mr. Dubbin with reference to the P. & I. coverage such as mentioned in these [fol. 173] other items, he signs as Claims Agent for the Moore-McCormack Lines, doesn't he; he never mentions Agent for the War Shipping Administration?

A. That is an interoffice communication. We have numerous offices, and the interoffice communication was in the natural transaction of business.

Q. Yes, Mr. Tripp, Mr. Dubbin is in a similar situation as you, is he not, in that you get your instructions from the Moore-McCormack Company, not from the War Shipping Administration, and the same is true of Mr. Dubbin; you get your pay checks from Moore-McCormack, Inc.?

A. I receive my pay check, yes, from Moore-McCormack Lines, Inc. That is correct.

Q. And you have never been employed in any capacity by the War Shipping Administration, have you, Mr. Tripp?

A. Well, I can answer that——

Q. (interrupting) Be very frank about it.

A. I can answer that, yes. One time I was connected with the War Shipping Administration.

Q. But you have not been connected with them since you have been connected with the Moore-McCormack Lines?

A. That is correct, except as agents for them.

Q. Wait a minute. Your company is agent, under your theory, for the War Shipping Administration, but you work for the Moore-McCormack Lines?

A. That is correct.

Q. And if you assist in fulfilling certain contracts which your company has with the War Shipping Administration, you are still working for Moore-McCormack Lines, aren't you?

A. That is correct.

Mr. Hicks: That is all.

Mr. Wood: That is all, Mr. Tripp.

[fol. 174] (Witness excused.)

Mr. Wood: That is defendant's case. Defendant rests.

* * * * * * *

Plaintiff rests.

Testimony closed.

MOTION FOR DIRECTED VERDICT

Mr. Wood: Defendant moves for a directed verdict in its favor on the ground that the evidence conclusively shows that the plaintiff was not employed by the defendant; and

on the further ground that the evidence conclusively shows that no tort or negligence as alleged in the complaint was committed by this defendant, and that the injury is not traceable to any negligence or tort of this defendant.

And in support of the motion, defendant points out that not merely is it not liable because no employer-employee relationship exists and no tort has been shown to have been committed by it, but in addition to that, this case is expressly, by the plaintiff's own allegation, brought under the Jones Act—the complaint so elects—and it is settled law—I don't think Mr. Green will dispute it—that in actions under the Jones Act, the relationship of employer and employee must exist. That condition did not obtain in any of these authorities that have been cited here. They were not brought under the Jones Act.

(Argument by counsel, upon the motion.)

The Court: Gentlemen, my feeling is here that I am going to submit it to the jury. That is the feeling I have in the matter. I think I should do it, under that 1941 amendment to our Code.

Mr. Wood: Then you mean that the Motion for Directed Verdict is now denied?

The Court: Yes, it will be denied.

Mr. Wood: Save an exception.

The Court: You may have an exception.

[fol. 175] • • • • • • •

INSTRUCTIONS TO JURY

• • • • • • •

This action is brought under the terms of an Act of Congress commonly known as the Jones Act, which extends to seamen sustaining injuries in the course of their employment certain privileges in bringing actions for damages. Under this law, the employer of any seaman is liable in damages to any seaman suffering injury in the course of his employment, resulting in whole or in part from the negligence of any of the officers, agents or employees of the employer of such seaman, or by reason of negligent failure to provide seaworthy ships or a safe place in which to work, or to provide safe appliances and equipment, and a breach of this duty constitutes negligence.

• • • • • • •

In determining the issues of this case you will first consider the question of whether the defendant, Moore-McCormack Lines, was the employer of the plaintiff at the time of his injury complained of, and if you find that this relationship of employer and employee existed, you will then determine the remaining issues of the case. If you find that this relationship of employment did not exist, your problems are at an end and you are obliged to find your verdict for the defendant.

On the other hand, if you find that the plaintiff was in the employment of the defendant, he is entitled to a verdict at your hands, providing you find under the instructions that the defendant was negligent in any manner set forth [fol. 176] in the plaintiff's complaint, bearing in mind the standard of requirements as given by the Court, and providing you further find that this negligence, if any, was a proximate cause of the accident and of his injuries. In determining this matter of employment, you are to take into consideration all of the evidence of the case, all of the facts and circumstances.

An employer is one who engages the services of another for hire and who is empowered to control and direct the activities of such individual in the performance of his duties as an employee. An employee is one who engages his services to another for hire and who agrees to perform service under the direction and control of the person hiring him, who is known as the employer. The power of control and direction is one of the principal factors which should be considered by you in determining whether the relationship of employee and employer existed between the plaintiff and the defendant. Stated otherwise, you shall determine by the evidence who had the power to control and direct Cecil I. Hust in the performance of his duties aboard the vessel on the 17th day of March, 1943, and at the time he received his injuries of which he complains in this case.

The defendant in this case, Moore-McCormack Lines, Inc., is a corporation. A corporation can only act through its agents, and it is bound by the acts of its agents when such acts are performed in the scope of their employment or agency, and while acting in the line of their duty as such agents or employees.

The fact that the defendant, Moore-McCormack Lines, Inc., was acting as the General Agent for the United States of America in the conduct of the business of the vessel S. S.

Mark Hanna will not, in and of itself, deprive the plaintiff of a right of recovery for injuries proximately caused by negligence on the part of defendant as alleged by the [fol. 177] plaintiff, if you find that the Moore-McCormack Lines, as a General Agent of the United States, was the employer of the plaintiff. And if you so find, he would be entitled to recover for his injuries proximately caused by its negligence as alleged in his complaint. But if you find that defendant, Moore-McCormack Lines, Inc., was not his employer, he would not be entitled to prevail.

The test to be applied is whether the plaintiff was or was not employed by the defendant. If he was so employed, he has a right to recover for injuries proximately caused by negligence of the defendant as alleged in his complaint. If he was not so employed, he has no right to recover from this defendant.

If you find the relationship of employer and employee to exist between the plaintiff and defendant, you will then consider the remaining issues of this case. In determining the remaining issues, you will first consider the question of responsibility for the accident and the extent of this responsibility under the law as the Court will give it to you.

If you find that plaintiff has failed to establish negligence as alleged, he cannot prevail and your verdict would be for the defendant, for plaintiff may recover only upon proof of negligence as pleaded in his complaint. In this connection I will advise you that proof of all of the specifications of negligence pleaded in plaintiff's complaint is not necessary or required, but the proof by a preponderance of satisfactory evidence of any one of said specifications as pleaded is sufficient to establish negligence.

* * * * * * * *

If you find from a preponderance of satisfactory evidence that defendant was negligent in any one or more of the particulars set forth in plaintiff's complaint and that such negligence, if any, was a proximate cause of the accident, you should find your verdict for the plaintiff, providing [fol. 178] you find he was employed by the defendant, and providing you further find that he sustained injuries as a proximate result thereof.

* * * * * * *

Now, gentlemen of counsel, the Court will advise you that requested instructions not given are refused, and exceptions are allowed.

* * * * * * *

The Court will require in this case that you answer an interrogatory, or question, to be propounded to you, as a part of your findings in this case. This interrogatory reads as follows:

"We, the jury, impaneled and sworn to try the above entitled cause, do answer the Interrogatory submitted to us by the Court as follows:

"Interrogatory: Was the plaintiff, Cecil I. Hust, at the time he sustained his injuries, on the 17th day of March, 1943, an employee of Moore-McCormack Lines, Inc., a corporation?

"Answer: (Yes, or No)."

If you answer this question "Yes," you will then proceed to determine from the facts and the law as the Court has given it to you, if the plaintiff has sustained the necessary proof required, and as to whether or not the plaintiff is entitled to a verdict in this case, and if you so find, you will sign this verdict:

"We, the jury, duly empaneled and sworn to try the above entitled civil action, do find our verdict as follows:

"We find that Cecil I. Hust, the plaintiff herein, was an employee of Moore-McCormack Lines, Inc., a corporation, defendant herein, on the 17th day of March, 1943, and that the said plaintiff sustained injuries in the course of his employment with said defendant company on the said 17th day of March, 1943.

"We do further find our verdict in favor of the plaintiff, [fol. 179] Cecil I. Hust and against the defendant, Moore-McCormack Lines, Inc., a corporation, and assess plaintiff's damages in the sum of blank dollars, inserting the amount you find from the evidence to be the proper amount.

If you answer this question in the negative, the question of employment, answer it NO, you will then sign the following verdict:

"We, the jury, duly impaneled to try this case, find our verdict for the defendant."

If you answer this question in the affirmative, you also have the right to find in favor of the defendant and to sign the defendant's verdict, even though the plaintiff was employed by the defendant,—even though you find he was employed by the defendant, if you find that plaintiff has failed to establish the negligence as alleged in his complaint, and has failed to establish that this negligence was the proximate cause of his injuries and his damages.

The Bailiffs will be sworn.

(Bailiffs were sworn, and the jury retired, for deliberation.)

* * * * * * *

EXCEPTIONS TO THE INSTRUCTIONS

Mr. Wood: Your Honor has already allowed exceptions to the Court's refusal to give instructions requested by the defendant, but I would like to place it in the record, that particularly the instruction that we requested for a directed verdict is based not only on the fact that there was no employer-employee relationship here, but also on the fact that none, neither the Captain nor any of the officers or crew of the ship were agents or servants of this defendant, and therefore, whatever happened aboard the ship, there was absolutely no negligence shown on the part of this defendant. In other words, the evidence fails utterly, I think, to give a scintilla of evidence to support the plaintiff's case.

* * * * * * *

[fol. 180] Then the defendant excepts particularly to submitting the interrogatory to the jury and the more or less special verdict based on the interrogatory because, as your Honor knows, we think the case should not be submitted to the jury at all.

* * * * * * *

The Court: You may have your exceptions. Exceptions allowed.

Exceptions to the instructions.

PLAINTIFF'S REQUESTED INSTRUCTIONS

Instruction No. 6

You are instructed that this is an action brought under what is known as Section 33 of the Merchant Marine Act of 1920, popularly known as the "Jones Act," which is a law passed by the Congress of the United States, extending to seamen injured in the line of their work as seamen the right of trial by jury in all actions against their employers with respect to such injuries, and which said law specifically extends to all injured seamen the benefits of all the laws of the United States, modifying or extending the common law remedy in cases of personal injury to railroad employes. In other words, the Jones Act extends to seamen, injured as the result of negligence of their employers, the right of action for such injuries with the right of jury trial, to the same extent that railroad employes have a right of action against their employers under similar circumstances.

[fol. 181] IN THE SUPREME COURT OF OREGON

[Title omitted]

STIPULATION—Filed October 16, 1945

It is hereby stipulated and agreed by and between the parties to the above entitled case, through their respective attorneys, that in view of difficulties encountered in securing a copy of Plaintiff's Exhibit 15 to be included in the record to be prepared by the Clerk of the above entitled Court that in lieu of a copy of said Exhibit the Clerk may include in said record for transmittal to the Supreme Court

of the United States the original copy of plaintiff's Exhibit 15 consisting of the agreement between the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association and various steamship companies.

Dated this 15 day of October, 1945.

(S.) Thomas H. Tongue III, Of Attorneys for Plaintiff-Respondent. Lofton L. Tatum, Of Attorneys for Defendant-Appellant.

[File endorsement omitted.]

[fol. 182] Clerk's Certificate to transcript omitted in printing.

PLAINTIFF'S EXHIBIT NO. 1 111

VOYAGE No. 1 DATE Oct. 13, 1942

MOORE-McCORMACK LINES, Inc.

CREW PASS AND MUSTER CARD

S. S. CLARK HANNA

NAME Hust, Cecil I.

ART No. _____ RATING Fireman

EMERGENCY STATION Fire room stand by Foamite fire extinguisher

BOAT No. 3

BOAT STATION Attend fwd guy and davit

Initialed J. Moloney

Cecil I. Hust

(Signature of Crew Member)

Keep This Card With You at All Times

PLAINTIFF'S EXHIBIT NO. 2-c

MOORE-McCORMACK LINES, Inc.

NAME C. Hust

FROM 10/9/42 TO 4/15/43	
WAGES	685.67
OVERTIME	
PORT BONUS	
WAR BONUS	
EXPLOSIVE BONUS	
LONG BONUS	
SUBSISTENCE	
BOARD & LODGING	226.80

Keep This Card With You at All Times

PLAINTIFF'S EXHIBIT NO. 2-c

MOORE-McCORMACK LINES, Inc.

NAME C. Hust

FROM 10/9/42 TO 4/15/44	
WAGES	685.67
OVERTIME	
PORT BONUS	
WAR BONUS	
EXPLOSIVE BONUS	
LONG BONUS	
SUBSISTENCE	
BOARD & LODGING	226.80
TOTAL WAGES	912 47
S. S. TAX	9 12
VICTORY TAX	11.13
INSURANCE	
ADVANCES	39 84 100 33
SLOP CHEST	176
ALLOTMENTS	
BOARD & LODGING	226.80
FINES	
TOTAL DEDUCTIONS	560 76
BALANCE DUE	351 71

Nov 15 1943 Pr. Ext. 7 Hawkins, Alvin, Clerk

COUNT MONEY BEFORE LEAVING

183-184

PLAINTIFF'S EXHIBIT NO. 13

TRIPLICATE

Form 705-A
(June 1939)

SHIPPING ARTICLES

(R. S. 4612, as amended—U. S. C., title 46, sec. 713)

DEPARTMENT OF COMMERCE
BUREAU OF MARINE INSPECTION
AND NAVIGATION
SHIPPING SERVICE

Notice is hereby given that section 4519 of the U. S. Revised Statutes (U. S. C., title 46, sec. 577) makes it obligatory on the part of the master of a merchant vessel of the United States, at the commencement of every voyage or engagement, to cause a legible copy of the agreement (forecastle card), omitting signatures, to be placed or posted up in such part of the vessel as to be accessible to the crew, under a penalty not exceeding ONE HUNDRED DOLLARS.

ARTICLES OF AGREEMENT BETWEEN MASTER AND SEAMEN IN THE MERCHANT SERVICE OF THE UNITED STATES

Required by Act of Congress, Title LIII, Revised Statutes of the United States (U. S. C., title 46, chap. 18)

Name of Ship	Official No.	Port of Registry	Date of Register	Registered Tonnage		Voyage No.
				Gross	Net	
MARK HANNA	242366	Portland, Oregon	10-3-42	7176	4874	1

Registered Managing Owner or Manager		Number of Seamen and Apprentices for which Accommodation is Certified	Class of Ship
Name	Address (State number of house, street and town)		
War Shipping Administration (Owner) Moore-McCormack Lines, Inc. (General Agents)	Washington, D. C. 5 Broadway, New York, N. Y.	86	Steam - Freight

Office of the U. S. SHIPPING COMMISSIONER FOR THE PORT OF Portland, Oregon, Oct. 9, , 1942

IT IS AGREED between the Master and seamen, or mariners, of the S. S. "MARK HANNA"

of Portland, Oregon *of which* Henry Hoppner

is at present Master, or whoever shall go for Master, now bound from the Port of [1] Portland, Oregon, *to*

a point in the Pacific Ocean to the westward of Vancouver, Washington, and thence to such ports and places in any part of the world as the Master may direct or as may be ordered or directed by the United States Government or any Department, Commission or Agency, thereof on the Pacific [illegible] to be deat[illegible] by the Master [illegible] *and back to a final port of discharge in the United States, for a term of time not exceeding* Twelve (12) *calendar months.*[2]

GOING ON SHORE IN FOREIGN PORTS IS PROHIBITED EXCEPT BY PERMISSION OF THE MASTER

NO DANGEROUS WEAPONS[3] OR GROG ALLOWED, AND NONE TO BE BROUGHT ON BOARD BY THE CREW

SCALE OF PROVISIONS to be allowed and served out to the Crew during the voyage in addition to the daily issue of lime and lemon juice and sugar, or other antiscorbutics in any case required by law

		Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Water	quarts	5	5	5	5	5	5	5
Bread, soft	pounds	1½	1½	1¼	1½	1½	1½	1½
Flour, soft	pounds		1		1		1	
Beef, salt	pounds	½		½		½		
Pork, salt	pounds							
Corned beef	pounds	1		1		1		
Fresh beef	pounds	1½	1½	1½	1¼	1½	1½	1½
Fish, dry, preserved, or fresh	pounds						1	
Potatoes or yams	pounds		1	1	1	1	1	1
Canned tomatoes	pounds	½					½	
Tea	pint			½				
Beans	pint		½		½			½
Rice	pint							

		Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Coffee (green berry)	ounces	XX	XX	XX	XX	XX	XX	XX
Tea	ounces							
Sugar	ounces	3	3	3	3	3	3	3
Molasses	pint	½		½		½		
Dried fruit	ounces	3		3		3		
Pickles	pint		½		½		½	
Vinegar	pint			½				½
Corn meal	ounces	4				4		
Onions	ounces	4				4		4
Lard	ounces	1	1	1	1	1	1	1
Butter	ounces	1	1	1	1	1	1	1
Mustard, pepper, and salt sufficient for seasoning								

GOING ON SHORE IN FOREIGN PORTS IS PROHIBITED EXCEPT BY PERMISSION OF THE MASTER

NO DANGEROUS WEAPONS[5] OR GROG ALLOWED, AND NONE TO BE BROUGHT ON BOARD BY THE CREW

SCALE OF PROVISIONS to be allowed and served out to the Crew during the voyage in addition to the daily issue of lime and lemon juice and sugar, or other antiscorbutics in any case required by law

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Water	quarts	8	8	8	8	8	8
Bread	pound	1/2	1/2	1/2	1/2	1/2	1/2
Flour, cwt.	pounds			1 1/2	1 1/2		1 1/2
Pork, salt	pound	1		1		1	
Peas	pound	1/2		1/2		1/2	
Oatmeal	pound	1		1			
Rice	pounds	1 1/2	1 1/2	1 1/2	1 1/2	1 1/2	1 1/2
Fish, dried, preserved, or fresh	pound						
Potatoes or yams	pounds	1	1	1	1	1	1
Canned tomatoes	pound	1/2				1/2	
Vinegar	pint		1/2		1/2		
Molasses	pint						1/2

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Coffee (green berry)	ounces	1 1/2	1 1/2	1 1/2	1 1/2	1 1/2	1 1/2
Tea	ounces	1/2	1/2	1/2	1/2	1/2	1/2
Sugar	ounces	3	3	3	3	3	3
Molasses	pint	1/2		1/2		1/2	
Dried fruit	ounces	3		3		3	
Pickles	pint		1/2		1/2		1/2
Vinegar	pint						
Corn meal	ounces	4				4	
Onions	ounces	4				4	4
Lard	ounces	1	1	1	1	1	1
Butter	ounces	1	1	1	1	1	1
Mustard, pepper, and salt sufficient for seasoning							

SUBSTITUTES

One pound of flour daily may be substituted for the daily ration of biscuit or fresh bread; two ounces of desiccated vegetables for one pound of potatoes or yams; six ounces of hominy, oatmeal, or cracked wheat, or two ounces of tapioca, for six ounces of rice; six ounces of canned vegetables for one-half pound of canned tomatoes; one-eighth of an ounce of tea for three-fourths of an ounce of coffee; three-fourths of an ounce of coffee for one-eighth of an ounce of tea; six ounces of canned fruit for three ounces of dried fruit; one-half ounce of lime juice for the daily ration of vinegar; four ounces of oatmeal or cracked wheat for one-half pint of corn meal; two ounces of pickled onions for four ounces of fresh onions.

When the vessel is in port and it is possible to obtain the same, one and one-half pounds of fresh meat shall be substituted for the daily rations of salt and canned meat; one-half pound of green cabbage for one ration of canned tomatoes; one-half pound of fresh fruit for one ration of dried fruit. Fresh fruit and vegetables shall be served while in port if obtainable. The seamen shall have the option of accepting the fare the Master may provide, but the right at any time to demand the foregoing scale of provisions.

The foregoing scale of provisions shall be inserted in every article of agreement, and shall not be reduced by any contract, except as above, and a copy of the same shall be posted in a conspicuous place in the galley and in the forecastle of each vessel.

And the said crew agree to conduct themselves in an orderly, faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the said Master, or of any person who shall lawfully succeed him, and of their superior officers, in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore; and in consideration of which service to be duly performed the said Master hereby agrees to pay to the said crew, as wages, the sums against their names respectively expressed, and to supply them with provisions according to the foregoing scale. And it is hereby agreed, that any embezzlement or willful or negligent destruction of any part of the vessel's cargo or stores shall be made good to the owner out of the wages of the person guilty of the same. And if any person enters himself as qualified for a duty which he proves himself incompetent to perform, his wages shall be reduced in proportion to his incompetency. And it is also agreed that if any member of the crew considers himself to be aggrieved by any breach of the agreement or otherwise, he shall represent the same to the Master or officer in charge of the ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require.

It is also agreed that [6]

Portland, Oregon
October 9, 1943

It is also agreed that bonus areas, bonus payments, insurance, reimbursements for lost personal effects, wages during internment, and repatriation coverages for all licensed and unlicensed personnel shall be governed by the Maritime War Emergency Board Decisions Nos. 1, 2, 3, 5, 7, & 8, with supplements, amendments, revisions, clarifications, corrections and attachments, and such subsequent decisions as may be applicable to the present voyage.

IN WITNESS WHE

Attested:

Harold M. Gall
Deputy U. S. Shipping Commissioner

Henry Haeffner
Master

c/o Commander 8th Naval District
San Francisco
(Give address)

on the 9th *day of* October, 1943.

The authority of the owner or agent for the allotments mentioned in these articles is in my possession.

Harold M. Gall
Deputy Shipping Commissioner

The Shipping Commissioner or Consular Officer will sign if such authority has been produced and will strike out in ink if it has not

[1] Here the voyage is to be described, and the places named at which the ship is to touch; or, if that cannot be done, the general nature and probable length of the voyage is to be stated, and the port or country at which the voyage is to terminate.

[2] If these words are not necessary they must be stricken out.

[5] Sec. 4608, R. S., prohibits the wearing of sheath knives on shipboard, and the Master informs the crew of this fact.

[6] Here any other stipulations may be inserted to which the parties agree, and which are not contrary to law.

N. B.—This form must not be unstitched. No leaves may be taken out of it, and none added or substituted. Care should be taken at the time of engagement that a sufficiently large form is used. If more men are engaged during the voyage than the number for whom signatures are provided in this form, an additional form should be obtained and used.

Any Erasure, Interlineation, or Alteration in this Agreement will be void, unless attested by a Shipping Commissioner, Consul General, Consul, or Consular Agent, to be made with the consent of the persons interested

PARTICULARS OF ENGAGEMENT

SIGNATURE OF SEAMAN	BIRTHPLACE (If foreign-born, but naturalised, insert NAT. in parenthesis after country of birth)	AGE	HEIGHT Ft.	HEIGHT In.	DESCRIPTION Complexion	DESCRIPTION Hair	NUMBER OF CONTINUOUS DISCHARGE BOOK OR CERTIFICATE OF IDENTIFICATION	SERIAL NUMBER OF LICENSE OR CERTIFICATE	IN WHAT CAPACITY	WAGES Per month	WAGES Rate per hour overtime	PLACE AND DATE OF SIGNING THIS AGREEMENT Place	PLACE AND DATE OF SIGNING THIS AGREEMENT Date	TIME AT WHICH TO BE ON BOARD	MONTHLY ALLOTMENTS Amount	MONTHLY ALLOTMENTS Payable to—
Robin Thames	nat-1930	155	5	8½	S		178-18-9588									
Knut Thorstensen	Norway	43	6	0	Lt.	Br.	0776218	174003	Chief Engr.	$306 80		Portland, Or.	10-8-42	10-9-42	200	Mrs. Clara Thomas (Wife)
Hugh D. McGregor	Mich.	50	5	7½	Lt.	Br.	0755752	169991	1st Asst. Engr.	220 00				10-9-42	130	Mrs. Ruth McGregor Miss Phillis Dorothy J. Cannon (mgr)
James R. Cannon, Jr.	Colo.	24	5	11	R.	Br.	127914	122326	2nd Asst. Engr.	201 25				10-9-42	180	
Francis J. Bristan	Ohio	22	5	11	Fr.	Br.	7-10945	126623	3rd Asst. Engr.	184 00			10-8-42	10-9-42		
Manuel Sandrick	Pa.	40	5	1	Lt.	Br.	7-99205-D1	C-87220	Deck Engr.	117 50			10-9-42	10-9-42	100	[illegible]
Henry W. Hood Jr.	N.C.	24	5	10	Lt.	Br.	3-2[illegible]-D1	C-60251	Oiler	110 00				10-9-42		
Andrew W. Lewis	Wash.	21	5	10½	Dk.	Br.	3-124941	C-54826	Oiler	110 00				10-9-42	100	Mrs. Elena D. Lewis (Wife)
George J. Goldbeck	Ore. ?	46	5	9	R.	Br.	3-293215	C-22824	Oiler	110 00				10-9-42		
Leon K. Munson	Ore.	20	5	6½	Fr.	Br.	3-293220	C-22584	Watertender & Fireman	110 00				10-9-42		
Cecil H. Hiatt	Ark.	35	6	0	R.	Br.	3-23851	YC-11927	Watertender & Fireman	110 00				10-9-42		
Leroy W. Berg	Minn.	37	6	-	Med	Br.	3-184162	C-67074	Watertender & Fireman	110 00				10-9-42	100	Mrs. Emma Pearl Berg (Wife)
Kenneth A. Nelson	Wash.	18	5	11	R	Br.	3-215858	E-399307	Wiper	87 50				10-9-42		
Wallace C. Haas	Wash.	19	5	11	Fr.	Blr.	3-31[illegible]52	E-399303	Wiper	87 50				10-9-42		
Leonard L. Pierce	Calif.	18	5	11	Lt.	Blr.	3-288036	E-270783 B-130983	Engine Cadet	74 75				10-9-42	50	Mr. Frank Lipper (Uncle)
Robert F. O. Bauer	Wash.	20	5	11	Med	Br.	3-213199	E-47919	Engine Cadet	74 75				10-9-42	40	Mrs. O. Bauer (mgr)

Form W-2
U. S. TREASURY DEPARTMENT
Internal Revenue Service

STATEMENT OF INCOME TAX WITHHELD ON WAGES
By Employer
(EMPLOYEE'S RECEIPT)

Calendar Year
1943

$ 16.65

INSTRUCTIONS TO EMPLOYER - Prepare this form in duplicate for each employee from whom a tax has been withheld. Furnish original to employee. Forward duplicate with Return of Income Tax Withheld on Wages, Form W-1, for the fourth quarter of the year (or with the employer's final return, if filed at an earlier date). (See Circular WT.)

INSTRUCTIONS TO EMPLOYEE - This is your receipt for Income Tax (including Victory Tax) withheld. You should keep it for use in preparing your Income and Victory Tax return for 1943, and as evidence of tax withheld.

EMPLOYER BY WHOM PAID (Name and Address of Employer)

Moore-Mc Cormack Lines, Inc.
5 Broadway
NEW YORK 4, NEW YORK

EMPLOYEE TO WHOM PAID	SOCIAL SECURITY NO.	Wages Paid During the Calendar Year 1943	Amount of Income Tax Withheld
D. Cameron	542 12 9952	1461 33	52 59

No. 151.782
Pft. Ext. 76
Alex Clark

DUPLICATE

(Print full name of employee, home address, and Social Security number. If employee is a married woman, name of husband should also be furnished.) (OVER)

193-194

PLAINTIFF'S EXHIBIT NO. 17

BALTIMORE
BOSTON
CHICAGO
DETROIT
LOS ANGELES
NEW YORK
PHILADELPHIA
PITTSBURGH
PORTLAND, ORE.
SAN FRANCISCO
SEATTLE

BELEM (PARA), BRAZIL
BUENOS AIRES, ARGENTINA
MONTEVIDEO, URUGUAY
RECIFE (PERNAMBUCO), BRAZIL

MOORE-McCORMACK LINES, INC.

AGENTS FOR

THE UNITED STATES OF AMERICA, WAR SHIPPING ADMINISTRATION

AMERICAN REPUBLICS LINE • PACIFIC REPUBLICS LINE • AMERICAN SCANTIC LINE

RIO DE JANEIRO, BRAZIL
SANTOS, BRAZIL
SAO PAULO, BRAZIL
SAO SALVADOR (BAHIA), BRAZIL

BERGEN, NORWAY
COPENHAGEN, DENMARK
GDYNIA, POLAND
GOTHENBURG, SWEDEN
HELSINGFORS, FINLAND
MALMO, SWEDEN
OSLO, NORWAY
STOCKHOLM, SWEDEN
WARSAW, POLAND

CABLE ADDRESS: MOOREMACK

Behnke Walker Building

~~BROADWAY-OAK BUILDING~~

1022 S. W. Salmon St., Portland, Ore.

~~OREGON BANK BUILDING, PORTLAND, OREGON~~

August 24, 1943

Mr. Cecil I. Hust
24 South Sixth Street
Forest Grove, Oregon

Re: SS MAUNA KEA

51787
17
Ltr Recd

Dear Mr. Hust:

We enclose letter just received from Lt. Commander W. W. Evans of the War Shipping Administration in New York regarding your claim, together with copy of letter from our San Francisco office.

Will you let us know the amount of your claim so that we may discuss this matter further with our own underwriters.

Very truly yours,

MOORE-McCORMACK LINES, INC.
AGENTS FOR THE UNITED STATES OF
AMERICA, WAR SHIPPING ADMINISTRATION

By

Manager

KCT:M
Encls.2

[fol. 196] Copy

War Shipping Administration, New York City

August 14, 1943.

Moore McCormack Lines, Inc., 200 Pine St., San Francisco, Cal.

Re: SS Mark Hanna, Cecil I. Hust

Your letter of August 10 and previous letters written by you in connection with the above entitled matter have been referred to me for reply.

It appears that the SS Mark Hanna was torpedoed on March 9, 1943, such action resulting in the vessel being in a disabled condition and necessitating a tow. On March 17, while the vessel was being towed to Port of Spain, Trinidad, the tow line parted and the Master ordered all hands out to get up a new tow line from the forepeak. One of the men in the group ordered to do this work was the above mentioned individual, Mr. Hust. Mr. Hust states that he went forward to the forepeak hatch "and went dow below one deck." Mr. Hust further states that there w no lights on the peak nor any guard rails along the hatch way and due to these conditions, he stepped t the open hatch and fell a distance of about twe resulting in rather severe injuries to his back. asked whether this disability is compensable und Shipping Administration Crew Life and Injury

Although, obviously the torpedoing constituted a peril covered by the decisions of the Maritime War Em gency Board, it is my view that the event actually causin injury is so remote that it is impossible to state that injury proximately resulted from the torpedoing. It seem that the actual occurrence causing injury woul resulted despite the reason for which Mr. Hust went be and that although the torpedoing was in a sense the caus of the injury in that Mr. Hust may not have gone below at the particular time for the reason that he did, I do not feel that this is enough to enable me to state that the injury was proximately caused by the torpedoing. It would seem that this event is clearly a marine risk and that, therefore,

it is a matter to be taken up by you with your marine P. & I. underwriters.

I reach this conclusion reluctantly. However, as I have stated, I am of the opinion that this claim is not within the perils clause of the War Shipping Administration Crew Life and Injury Policy and for that reason the same must be rejected.

Very truly yours, Lt. Comdr. W. N. Evans, Acting Assistant General Counsel, by Walter T. Hughes, Jr.

[fol. 197] Moore McCormack Lines, Inc., San Francisco, Cal.

August 23, 1943.

From: H. W. Dubbin, San Francisco.

To: Mr. K. C. Tripp, Portland.

Subject: Cecil I. Hust, FWT., SS Mark Hanna, SF File 608-A

We have received attached copy of letter from the War Shipping Administration regarding Mr. Hust's claim. You will note that they have declined liability for the reason that the injury was not proximately caused by torpedoing and is, therefore, a matter to be referred to our P. & I. Underwriters. This decision is somewhat questionable, nevertheless we will probably have to submit file to the Fulton Underwriting Agency. In presenting Mr. Hust's claim to Fulton, it will be necessary to have the amount he is claiming.

Will you kindly contact the claimant and inform him of the War Shipping Administration's decision, and advise that we are taking the matter up with our own underwriters and request that he submit a claim amount.

H. W. Dubbin.

[fol. 198] DEFENDANT'S EXHIBIT No. 21

Moore-McCormack Lines, Inc. (5 Broadway, New York, N. Y.), Air Mail.

American Republic Line—Copy via Regular Mail—American Scantic Line.

From: Albert F. Chrystal, April 8, 1944.

To: Mr. K. C. Tripp, Portland, Via Air Mail.

Subj.: Your Telegram to "Holt-Smith" Received yesterday.

We attach hereto certified true copies of our G. A. A. Service Agreement (Contract WSA-215) and Letter No. 6 of the War Shipping Administration authorizing and accepting the Mark Hanna for operation under the aforementioned agreement. Kindly return the GAA Contract to the writer when it has served your purpose.

Albert F. Chrystal.

[fol. 199] Copy

War Shipping Administration

Washington

September 14, 1942.

Moore-McCormack Lines, Inc., 5 Broadway, New York, New York.

GENTLEMEN:

The Administrator of the War Shipping Administration has authorized the allocation of the following vessels to your company for the purpose of conducting the business of the vessels for the United States under General Agent Service Agreement (Form GAA), between the United States of America and your company (Contract WSA 215) dated October 19, 1941, subject to all the terms and conditions set forth therein:

Name of Vessel	Date of Allocation	Date of Delivery
Mark Hanna	August 12, 1942	Building
Mormacyork	August 13, 1942	August 19, 1942
Malcolm M. Stewart	September 1, 1942	Building
George Weems	September 8, 1942	Building
Samuel F. B. Morse	September 8, 1942	Building

Kindly indicate your acceptance of the allocation as herein provided of these vessels by executing the acknowledgment on the two carbon copies of this letter that are attached hereto, and return them to his office as promptly as possible.

Very truly yours, (Sgd.) W. C. Peet, Jr., Secretary.

Acknowledged and accepted on behalf of Moore-McCormack Lines, Inc., by (Sgd.) Henry P. Molloy, Vice President. (Corporate seal.)

(Letter No. 6—Certified a true copy. Moore-McCormack Lines, Inc., Albert F. Chrystal, Assistant Secretary.)

[fol. 200] Certified a true copy prepared by and received from the United States of America War Shipping Administration. Moore-McCormack, Albert F. Chrystal, Asst. Secty.

Moore-McCormack Lines, Inc.,

5 Broadway,

Legal Dept.

GAA 4-4-42. Contract WSA-215

Service Agreement for Vessels of Which the War Shipping Administration Is Owner or Owner Pro Hac Vice

This Agreement, made as of October 19, 1941, between the United States of America, (herein called the "United States") acting by and through the Administrator, War Shipping Administration, and Moore-McCormack Lines, Inc., a corporation organized and existing under the laws of Delaware, and having its principal place of business at New York, N. Y., (herein called the "General Agent").

Witnesseth: That in consideration of the reciprocal undertakings and promises of the parties herein expressed:

Article 1. The United States appoints the General Agent as its agent and not as an independent contractor, to manage and conduct the business of vessels assigned to it by the United States from time to time.

Article 2. The General Agent accepts the appointment and undertakes and promises so to manage and conduct the business for the United States, in accordance with such di-

rections, orders, or regulations as the latter has prescribed, or from time to time may prescribe, and upon the terms and conditions herein provided, of such vessels as have been or may be by the United States assigned to and accepted by the General Agent for that purpose.

Article 3A. To the best of its ability, the General Agent shall for the account of the United States:

(a) Maintain the vessels in such trade or service as the United States may direct, subject to its orders as to voyages, cargoes, priorities of cargoes, charters, rates of freight and charges, and as to all matters connected with the use of the vessels; or in the absence of such orders, the General Agent shall follow reasonable commercial practices;

(b) Collect all moneys due the United States under this Agreement and deposit, remit, or disburse the same in accordance with such regulations as the United [fol. 201] States may prescribe from time to time, and account to the United States for all moneys collected or disbursed by it or its agents;

(c) Equip, victual, supply and maintain the vessels, subject to such directions, orders, regulations and methods of supervision and inspection as the United States may from time to time prescribe;

(d) The General Agent shall procure the Master of the vessels operated hereunder, subject to the approval of the United States. The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. Such officers and men shall be procured by the General Agent through the usual channels and in accordance with the customary practices of commercial operators and upon the terms and conditions prevailing in the particular service or services in which the vessels are to be operated from time to time. The officers and members of the crew shall be subject only to the orders of the Master. All such persons shall be paid

in the customary manner with funds provided by the United States hereunder.

(e) Issue or cause to be issued to shippers customary freight contracts and Bills of Lading. Unless the United States shall otherwise instruct, such Bills of Lading shall contain all exemptions and stipulations usual to the particular trade or service in which the vessels may be engaged, and reserve a lien upon all cargoes for the payment of freight, primage charges, dead freight, demurrage, forwarding charges, advance charges for carriage to port of shipment, for contributions in general average and special charges on cargo and for all fines or penalties which the vessels or cargoes may incur by reason of illegal, incorrect or insufficient marking or addressing of packages or [fol. 202] description of their contents. After a uniform Bill of Lading shall have been adopted by the United States, such Bill of Lading shall be used in all cases as soon as practicable after receipt thereof by the General Agent, with such modifications as shall be necessary for the particular trades in which the vessels hereunder shall from time to time be employed. Pending the issuance of such uniform Bill of Lading, the General Agent may continue to use its usual commercial form of Bill of Lading.

As soon as practicable after April 1, 1942, all Bills of Lading shall be issued by the General Agent or its agents as agent for the Master and the signature clause may provide substantially that the General Agent makes no warranty or representation as to the authority of the United States or the Master to enter into the agreement, and that the General Agent assumes no liability with respect to the goods described therein or the transportation thereof.

Article 3B. The General Agent agrees, without prejudice to its rights under the provisions of Articles 8 and 16 hereof, to:

(a) Perform the duties required to be performed by it hereunder in an economical and efficient manner, and exercise due diligence to protect and safeguard the interests of the United States in all respects and to

avoid loss and damage of every nature to the United States;

(b) Exercise due diligence to see that all Bills of Lading are properly issued, all wharf receipts for freight are non-negotiable, and where required, a freight contract or permit is issued for each shipment;

(c) Furnish and maintain during the period of this Agreement, at its own expense, a bond with sufficient surety, in such amount as the United States shall determine, such bond to be approved by the United States as to both sufficiency of surety or sureties and form, and to be conditioned upon the due and faithful performance of all and singular the covenants and agreements of the General Agent contained in this Agree- [fol. 203] ment, including, without limitation of the foregoing the condition faithfully to account to the United States for all funds collected and disbursed and funds and property received by the General Agent or its agents. The General Agent may, in lieu of furnishing such bond, pledge direct or fully guaranteed obligations of the United States of America of the face value of the penalty of the bond under an agreement satisfactory in form to the United States;

(d) Without the consent of the United States, not sell, assign or transfer, either directly or indirectly or through any reorganization, merger or consolidation, this Agreement or an interest therein, nor make any agreement or arrangement whereby the service to be performed hereunder is to be performed by any other person, whether an agent or otherwise, except as provided in Article 6 hereof.

Article 4. (a) The General Agent and, to the extent required by the United States, every related or affiliated company or holding company of the General Agent, authorized as provided in Article 13 hereof, to render any service or to furnish any stores, supplies, equipment, provisions, materials or facilities which are for the account of the United States under the terms of this Agreement, shall (1) keep its books, records and accounts relating to the management, operation, conduct of the business of and maintenance of the vessels covered by this Agreement in

such form and under such regulations as may be prescribed by the United States; and (2) file, upon notice from the United States, balance sheets, profit and loss statements, and such other statements of operation, special reports, memoranda of any facts and transactions, which, in the opinion of the United States, affect the results in, the performance of, or transactions or operations under this Agreement.

(b) The United States is hereby authorized to examine and audit the books, records and accounts of all persons referred to above in this Article whenever it may deem it necessary or desirable.

[fol. 204] (c) Upon the willful failure or willful refusal of any person described in this Article to comply with the provisions of this Article, the United States may rescind this Agreement.

Article 5. At least once a month the United States shall pay to the General Agent as full compensation for the General Agent's services hereunder, such fair and reasonable amount as the Administrator, War Shipping Administration, shall from time to time determine: Provided, That with respect to vessels allocated before February 25, 1942, compensation shall not be less than the amount of earnings which the General Agent would have been permitted to earn under any applicable previously existing bareboat charters, preference agreements, commitments, rules or regulations of the United States Maritime Commission until the earliest termination date permissible thereunder as of March 22, 1942. Such compensation shall be deemed to cover, but without limitation, the General Agent's administrative and general expense (as presently itemized in General Order No. 22 of the United States Maritime Commission), advertising expense, taxes (other than taxes for which the General Agent is reimbursed under Article 7 hereof), and any other expenses which are not directly and exclusively applicable to the maintenance, management, operation or the conduct of the business of the vessels hereunder.

Article 6. The General Agent shall exercise due diligence in the selection of agents. Such agents shall be subject to disapproval by the United States and any agency agreement shall be terminated by the General Agent whenever the United States shall so direct. Any compensation pay-

able by the General Agent to its agents for services rendered in connection with the vessels assigned hereunder shall be subject to approval by the United States. In the event that any of the vessels covered by this Agreement are operated in a service in which an American citizen maintained a berth operation with American flag vessels on September 1, 1939, the General Agent, upon request of the United States, will assign such vessels to such berth operators as agents as may be appropriate under form of agreement prescribed by the United States. Agency fees or equivalent allowances for branch offices in accordance with schedules approved by the United States will be reim [fol. 205] bursable under Article 7 hereof.

Article 7. The United States shall reimburse the General Agent at stated intervals determined by the United States for all expenditures of every kind made by it in performing, procuring or supplying the services, facilities, stores, supplies or equipment as required hereunder, *excepting* general and administrative expense (as presently itemized in General Order No. 22 of the United States Maritime Commission), advertising expense, taxes (other than sales and similar taxes or foreign taxes of any kind to the extent determined by the United States to be classifiable as voyage expenses hereunder) and any other expenses which are not directly and exclusively applicable to the maintenance, management, operation or the conduct of the business of the vessels hereunder. The General Agent shall be reimbursed for sales and similar taxes or foreign taxes of any kind to the extent determined by the United States to be classifiable as voyage expenses hereunder if the General Agent shall have used due diligence to secure immunity from such taxation. To the extent not recovered from insurance, the United States shall also reimburse the General Agent for all crew expenditures, accruing during the term hereof) in connection with the vessels hereunder, including, without limitation, all disbursements for or on account of wages, extra compensation, overtime, bonuses, penalties, subsistence, repatriation, travel expense, loss of personal effects, maintenance, cure, vacation allowances, damages or compensation for death or personal injury or illness, and insurance premiums, required to be paid by law, custom, or by the terms of the ship's articles or labor agreements, or by action of the Maritime War Emergency Board, any pay-

ments made by the General Agent to a pension fund in accordance with a pension plan in effect on the effective date of this Agreement with respect to the officers and members of the crew of said vessels who are entitled to benefits under such plan, on the effective date of this Agreement, for the amount of any social security taxes which the General Agent is or may be required to pay on behalf of the officers and crew of said vessels as agent or otherwise. The United States may disallow, in whole or in part, as it may deem appropriate, and deny reimbursement for, expenses which [fol. 206] are found to have been made in willful contravention of any outstanding instructions or which were clearly improvident or excessive.

Any moneys advanced to bonded persons by the General Agent for ship disbursements which are lost by reason of a casualty to the Vessel on which the money so advanced is carried shall in the event of such loss be considered an expense of the General Agent, subject to reimbursement as is in the Article 7 provided.

The United States may advance moneys to the General Agent to provide for disbursements hereunder in accordance with such regulations or conditions as the United States may from time to time prescribe.

Article 8. The United States shall, without cost or expense to the General Agent, procure or provide insurance against all insurable risks of whatsoever nature or kind relating to the vessels assigned hereunder (which insurance shall include the General Agent and the vessel personnel as assureds) including, but without limitation, marine, war and P. & I. risks, and all other risks or liabilities for breach of statute and for damage caused to other vessels, persons or property, and shall defend, indemnify and save harmless the General Agent against and from any and all loss, liability, damage and expense (including costs of court and reasonable attorneys' fees) on account of such risks and liabilities, to the extent not covered or not fully covered by insurance. The General Agent shall furnish reports and information and comply fully with all instructions that may be issued with regard to all salvage claims, damages, losses or other claims. Neither the United States nor the insurance underwriters shall have any right of subrogation against the General Agent with respect to such risks. The United States may assume any of the foregoing risks ex-

cept those relating to P. & I. risks and collision liabilities. At all times during the period of this Agreement, the United States shall at its own expense provide and pay for insurance with respect to each vessel hereunder against protection and indemnity marine and war risks, and collision liabilities without limit as to liability as to the amount of any claim or the aggregate of any claims thereunder. The United States at its election may write all or any such [fol. 207] insurance, including that against P. & I. and collision liabilities, in its own fund, pursuant to a duly executed policy or policies. Neither the United States nor the insurance underwriters shall have any right of subrogation against the General Agent with respect to any of the foregoing risks. All insurance hereunder shall cover both the United States and the General Agent.

Article 9. In the event of general average involving vessels assigned to the General Agent under this Agreement, the General Agent shall comply fully with all instructions issued by the United States in that connection including instructions as to the appointment of adjuster, obtaining general average security and asserting liens for that purpose unless otherwise instructed, and supplying the adjuster with all disbursements accounts, documents and data required in the adjustment, statement and settlement of the general average. Reasonable compensation for and general average allowances to the General Agent in such cases shall be in accordance with directions, orders or regulations of the United States.

Article 10. Salvage claims for services rendered to vessels other than vessels owned or controlled by the United States shall be handled by, and be under the control of, the United States. Salvage awards for services rendered to other vessels owned or controlled by the United States including the vessels hereunder shall be made by the United States. The General Agent shall furnish the United States with full reports and information on all salvage services rendered.

Article 11. (a) The United States shall have the right to terminate this Agreement at any time as to any and all vessels assigned to the General Agent and to assume control forthwith of any and all said vessels upon fifteen (15) days' written or telegraphic notice.

(b) Upon giving to the United States thirty (30) days' written or telegraphic notice, the General Agent shall have the right to terminate this Agreement, but termination by the General Agent shall not become effective as to any vessel until her arrival and discharge at a continental United States port.

(c) This Agreement may be terminated, modified, or amended at any time by mutual consent.

[fol. 208] Article 12. In case of termination of this Agreement, whether upon expiration of the stated period hereof or otherwise, all vessels and other property of whatsoever kind then in the custody of the General Agent pursuant to this Agreement, shall be immediately turned over to the United States, at times and places to be fixed by the United States, and the United States may collect directly, or by such agent or agents as it may appoint, all freight moneys or other debts remaining unpaid: Provided, That the General Agent shall, if required by the United States, adjust, settle and liquidate the current business of the vessels. Notwithstanding the foregoing provisions, when the United States shall so direct, the General Agent shall complete the business of voyages commenced prior to the date as of which the Agreement shall be terminated, and, if directed by the United States and subject to any instructions issued by the United States with respect thereto, the General Agent shall continue to book cargo for the vessels for the next voyages after the termination of this Agreement. No such termination of this Agreement shall relieve either party of liability to the other in respect of matters arising prior to the date of such termination or of any obligation hereunder to indemnify the other party in respect of any claim or demand thereafter asserted, arising out of any matter done or omitted prior to the date of such termination.

Article 13. Agreements or arrangements with any interested or related company to render any service or to furnish any stores, supplies, equipment, materials, repairs, or facilities hereunder shall be submitted to the United States for approval as to employment. Unless and until such agreements or arrangements have been approved by the United States, compensation paid to any interested or related company shall be subject to review and readjustment by the United States. In connection with such review and readjustment, the United States may deny reimburse-

ment hereunder of any portion of such compensation which it deems to be in excess of fair and reasonable compensation. The United States may also deny reimbursement, in whole or in part, of compensation under any arrangement or agreement with an interested or related company which it deems to be exorbitant, extortionate or fraudulent. The term "interested company" shall mean any person, firm, [fol. 209] or corporation in which the General Agent, or any related company of the General Agent, or any officer or director of the General Agent, or any employee of the General Agent who is charged with executive or supervisory duties, or any member of the immediate family of any such officer, director or empolyee, or any officer or director of any related company of the General Agent or any member of the immediate family of an officer or director of any related company of the General Agent, owns any substantial pecuniary interest directly or indirectly. The term "related company", used to indicate a relationship with the General Agent for the purposes of this Article only, shall include any person or concern that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the General Agent. The term "control" (including the terms "controlled by" and "under common control with") as used herein means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the General Agent (or related company), whether through ownership of voting securities, by contract, or otherwise.

Article 14. The General Agent shall, unless otherwise instructed, subject to such regulations, instructions, or methods of supervision and inspection as may be required or prescribed by the United States, arrange for the repair of the vessels, covering hull, machinery, boilers, tackle, apparel, furniture, equipment, and spare parts, and including maintenance and voyage repairs and replacements, for the account of the United States, as may be necessary to maintain the vessels in a thoroughly efficient state of repair and condition. The General Agent shall exercise reasonable diligence in making inspections and obtaining information with respect to the state of repair and condition of the vessels, and so advise the United States from time to time, in order that the United States may satisfy itself that the vessels are being properly maintained, and

shall cooperate with representatives of the United States in making any inspections or investigations that the United States may deem desirable.

Article 15. The United States shall, when it may legally do so, have the advantage of any existing, or future, con- [fol. 210] tracts of the General Agent for the purchase or rental of materials, fuel, supplies, facilities, services, of equipment, if this may be done without unreasonably interfering with the requirements of other vessels owned or operated by the General Agent.

Article 16. (a) The United States shall indemnify, and hold harmless and defend the General Agent against any and all claims and demands (including costs and reasonable attorneys' fees in defending such claim or demand, whether or not the claim or demand be found to be valid) of whatsoever kind or nature and by whomsoever asserted for injury to persons or property arising out of or in any way connected with the operation or use of said vessels or the performance by the General Agent of any of its obligations hereunder, including but not limited to any and all claims and demands by passengers, troops, gun crews, crew members, shippers, third persons, or other vessels, and including but not limited to claims for damages for injury to or loss of property, cargo or personal effects, claims for damages for personal injury or loss of life, and claims for maintenance and cure.

(b) In view of the extraordinary wartime conditions under which vessels will be operated hereunder, the General Agent shall be under no responsibility or liability to the United States for loss or damage to the vessels arising out of any error of judgment or any negligence on the part of any of the General Agent's officers, agents, employees, or otherwise. However, the General Agent may be held liable for loss or damage not covered by insurance or assumed by the United States as required under Article 8 of this Agreement, if such loss or damage is directly and primarily caused by willful misconduct of principal supervisory shoreside personnel or by gross negligence of the General Agent in the procurement of licensed officers or in the selection of principal supervisory shoreside personnel.

(c) In the event that the General Agent shall perform any stevedoring, terminal, ship repair or similar service

for the vessels hereunder at commercial rates, the General Agent shall have all the obligations and responsibilities of the person performing such services under the standard or other approved form of contract with the United States [fol. 211] or, in the absence of such standard or approved form, under usual commercial practice.

(d) The General Agent shall be under no liability to the United States of any kind or nature whatsoever in the event that the General Agent should fail to obtain officers or crews for the operation of the vessels, or fail to arrange for the fitting out, refitting, maintenance or repair of said vessels, or fail to perform any other service hereunder by reason of any labor shortage, dispute or difficulty, or any strike or lockout or any shortage of material or any act of God or peril of the sea or any other cause beyond the control of the General Agent whether or not of the same or similar nature; or shall do or fail to do any act in reliance upon instructions of military or naval authorities.

Article 17. Wherever and whenever herein any right, power, or authority is granted or given to the United States, such right, power, or authority may be exercised in all cases by the War Shipping Administration or such agent or agents as it may appoint or by its nominee, and the act or acts of such agent or agents or nominee, when taken, shall constitute the act of the United States hereunder. In performing its services hereunder, the General Agent may rely upon the instructions and directions of the Administrator, his officers and responsible employees, or upon the instructions and directions of any person or agency authorized by the Administrator. Wherever practicable, the General Agent shall request written confirmation of any oral instructions or directions so given.

Article 18. (a) The General Agent warrants that it has not employed any person to solicit or secure this Agreement upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the United States the right to annul this Agreement or in its discretion to deduct from any amount payable hereunder the amount of such commission, percentage, brokerage or contingent fee.

(b) In any act performed under this Agreement, the General Agent and any subcontractor shall not discriminate

against any citizen of the United States on the ground of race, creed, color or national origin.

Article 19: No person elected or appointed a member of [fol. 212] or delegate to Congress or a Resident Commissioner, directly or indirectly, himself or by any other person in trust for him, or for his use or benefit, or on his account shall hold or enjoy this Agreement in whole or in part, except as provided in Section 206, Title 18, U. S. C. The General Agent shall not employ any member of Congress, either with or without compensation, as an attorney, agent, officer or director.

Article 20. Subject to the provisions of Article 5 hereof, this Agreement is in substitution of and hereby abrogates and replaces the so-called 1¢ Bareboat Charter Agreements relating to the assignment or allocation to the General Agent of the vessels listed on Exhibit A hereto from the dates stated on such exhibit. Preference Agreements relating to such allocated vessels shall be terminated and abrogated as of the same dates.

All rights and obligations of the parties under said abrogated Bareboat Charter and Preference Agreements are hereby cancelled and this Agreement is made retroactive to the cancellation dates thereof as stated on Exhibit A hereto. However, the General Agent shall be reimbursed for any expenditure made before the earliest permissible cancellation date after March 22, 1942, under said agreements to the extent that such expenditure would have been considered in computing additional charter hire or freight under such agreements. This Agreement, unless sooner terminated, shall extend until six months after the cessation of hostilities.

In Witness Whereof, the Parties hereto have executed this Agreement in triplicate the day and year first above written.

United States of America, by E. S. Land, Administrator, War Shipping Administration, by D. F. Houlihan, for the Administrator; Moore-McCormack Lines, Inc., by Henry P. Molloy, Vice President.

Attest: Albert F. Chrystal, Assistant Secretary.

Approved as to form: W. Radner, General Counsel.

Beach. Cates. (Seal.)

[fol. 213] EXHIBIT "A" TO CONTRACT WSA—215
MOORE-McCORMACK LINES, INC.

Vessel	Date Allocation Approved	Date of Delivery	Cancellation Date of Previous Bare-Boat Charter or Preference Agreement, or both	Date of Redelivery
MOUNT EVANS	10/28/41	10/19/41	10/19/41	
WEST MAXIMUS	12/ 5/41	12/13/41	10/19/41	
CITY OF FLINT	12/18/41	11/24/41	10/19/41	
THUNDERER (ex-AMAZON)	12/30/41	12/27/41	10/19/41	
CHENANGO (ex-KURIKKA)	12/30/41	12/30/41	10/19/41	
ARC LIGHT	12/30/41	12/30/41	10/19/41	
GRANVILLE (ex-WIPUNEN)	12/30/41	12/30/41	10/19/41	
MORMACRIO	1/13/42	1/10/42	10/19/41	
DEER LODGE	1/13/42	1/ 5/42	10/19/41	
MORMACREY	2/11/42	3/ 2/42	10/19/41	
MORMACMAR	2/11/42	1/15/42	10/19/41	
MORMACSUL	2/11/42	2/ 7/42	10/19/41	
COLLAMER	2/11/42	2/17/42	10/19/41	*Sunk 3/5/42
INDEPENDENCE HALL	2/11/42	2/ 4/42	10/19/41	**Stranded 2/4/42
WEST KEENE	2/11/42	To be delivered	10/19/41	

*Approximate date of loss, declared date of loss to be determined by Administrator.
**Reported date of stranding, declared date of loss to be determined by Administrator.

[fol. 214] I, Henry P. Molloy, certify that I am the duly chosen, qualified, and acting Secretary of Moore-McCormack Lines, a party to this Agreement, and, as such, I am the custodian of its official records and the minute books of its governing body; that Henry P. Molloy who signed this Agreement on behalf of said corporation, was then a duly qualified Vice-President of said corporation; that said officer affixed his manual signature to said Agreement in his official capacity as said officer for and on behalf of said corporation by authority and direction of its governing body duly made and taken; that said Agreement is within the scope of the corporate and lawful powers of this corporation.

Henry P. Molloy, Secretary.

(Corporate Seal.)

[fol. 215] DEFENDANT'S EXHIBIT No. 25

War Shipping Administration, Washington

May 25, 1942.

Operations Regulation No. 1

Pertaining to Service Agreement for Vessels of Which the War Shipping Administration Is Owner or Owner Pro Hac Vice

Policy with Respect to Seagoing Personnel

Attached are copies of the following:

Statement of Policy dated Washington May 4, signed by the War Shipping Administration by representatives of the Master-, Mates & Pilots of America, and the National Marine Engineers' Beneficial Association.

Statement of Policy dated Washington May 4, signed by the War Shipping Administration and by representatives of the Sailors Union of the Pacific, Marine Firemen, Oilers, Watertenders & Wipers Association, Seafarers International Union and the Marine Cooks & Stewards Association.

Letter dated May 8 addressed to Mr. Joseph Curren, President of the National Maritime Union of America by Captain Edward Macauley.

Statement of Policy dated Washington May 12, signed by the War Shipping Administration and by the National Maritime Union.

All General Agents are instructed to follow the policy outlined in the attachments with respect to seagoing personnel on vessels owned by or bareboat chartered to the War Shipping Administration and assigned to General Agents under General Agency Agreements.

(Sgd.) M. L. Wilcox, Director of Operations.

[fol. 216] (Masters, Mates & Pilots of America, Marine Engineers' Beneficial Assn., May 4, 1942)

Statement of Policy

I. *Existing Collective Bargaining Agreements to Stand.*

Article 3 (d) of the Service Agreement signed between Agents and the War Shipping Administration under which Agents handle vessels owned by or bareboat chartered to the War Shipping Administration shall remain in force and effect. This article reads as follows:

"(d) The General Agent shall procure the Master of the vessels operated hereunder, subject to the approval of the United States. The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. Such officers and men shall be procured by the General Agent through the usual channels and in accordance with the customary practices of commercial operators and upon the terms and conditions prevailing in the particular service or services in which the vessels are to be operated from time to time. The officers and members of the crew shall be subject only to the orders of the Master. All such persons shall be paid in the customary manner with funds provided by the United States hereunder."

The intention of this clause is that in order to make available the full supply of officers and men and to avoid favoritism as to conditions between one agent and another, with respect to preference of employment or use of union hiring halls, all agents will be required to procure officers and men in accordance with such conditions.

[fol. 217] II. *Wages and Working Conditions.*

It is hereby agreed that the provisions of existing collective bargaining agreements be continued and observed unless changed by mutual agreement between the War Shipping Administration and the unions, or in case of a

deadlock by decision of the Maritime War Emergency Board.

III. *Discipline.*

The conditions aboard ship, including common hazard and peril, in war time require the highest standard of order and discipline. To accomplish this purpose, the unions agree to cooperate fully with the War Shipping Administration, as follows:

(1) Maintenance of the authority of the Master and of discipline, including strict and prompt enforcement of laws relating to conduct aboard ship.

(2) Elimination of crews' mass meetings, crews' committees and other similar meetings or groups aboard ship. However, one man in each department will be recognized as the spokesman for that department, but all disputes shall be settled only upon termination of the voyage in a continental port of the United States pursuant to procedures laid down in the collective bargaining agreements.

(3) Without waiving the right to strike, the unions hereby give firm assurance and guarantee that the exercises of this right will be absolutely withheld for the duration of the war.

[fol. 218] IV. *Duration.*

The above provisions shall apply on all vessels of the United States Merchant Marine, owned by or bareboat chartered to The War Shipping Administration as long as the War Shipping Administration has jurisdiction of vessels of the American Merchant Marine.

On behalf of the National Organization of Masters, Mates and Pilots of America, (Sgd.) James J. Delaney. On behalf of the National Marine Engineers' Beneficial Association, (Sgd.) S. J. Hogan. E. S. Land; Edward Macauley, for the War Shipping Administration; William Radner.

Dated May 4, 1942, Washington, D. C.

[fol. 219] (Pacific Coast Seamen, Firemen, and Cooks and Stewards—May 4, 1942.)

Statement of Policy

I. *Existing Collective Bargaining Agreements to Stand.*

Article 3(d) of the Service Agreement signed between Agents and the War Shipping Administration under which Agents handle vessels owned by or bareboat chartered to the War Shipping Administration shall remain in force and effect. This article reads as follows:

> "(d) The General Agent shall procure the Master of the vessels operated hereunder, subject to the approval of the United States. The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. Such officers and men shall be procured by the General Agent through the usual channels and in accordance with the customary practices of commercial operators and upon the terms and conditions prevailing in the particular service or services in which the vessels are to be operated from time to time. The officers and members of the crew shall be subject only to the orders of the Master. All such persons shall be paid in the customary manner with funds provided by the United States hereunder."

The intention of this clause is that the General Agent will procure and make available to the Master for engagement by the Master, officers and men through the channels which the Agent has heretofore used for his own merchant ships. If the General Agent has contracts with unions and those contracts require for example preference of employment or use of union hiring halls, the Agent would be required to procure men in accordance with contracts.

[fol. 220] II. *Wages and Working Conditions.*

Inasmuch as base wages, emergency wages, overtime rates, bonuses, war risk compensation, repatriation and allotment conditions have been generally equalized in East Coast, West Coast and Gulf Collective Bargaining Agree-

ments, which agreements have established equitable practices and standards in manning the American Merchant Marine now necessary to furtherance of the war efforts, it is therefore agreed that the existing collective Bargaining Agreements be frozen for the duration of the war.

III. *Discipline.*

The conditions aboard ship, including common hazard and peril, in wartime require the highest standard of order and discipline. To accomplish this purpose, the unions agree to cooperate fully with the War Shipping Administration, as follows:

(1) Maintenance of the authority of the Master and of discipline including strict and prompt enforcement of laws relating to conduct aboard ship.

(2) Elimination of crews' mass meetings, crews' committees and other similar meetings or groups aboard ship. However, one man in each department will be recognized as the spokesman for that department, but all disputes shall be settled only upon termination of the voyage in port where shipping articles are closed.

(3) It is understood that all disputes will be settled through the regular machinery now in existence under [fol. 221] the collective bargaining agreements between the unions and the steamship operators.

(4) Without waiving the right to strike, the unions hereby give firm assurance and guarantee that the exercise of this right will be absolutely withheld for the duration of the war.

IV. *Duration.*

This Statement of Policy will remain in effect as long as the War Shipping Administration has jurisdiction of vessels of the American Merchant Marine.

(Sgd.) E. S. Land; Edward Macauley, for the War Shipping Administration; Harry Lundeberg, Secretary-Treasurer, S. U. P. President, S. I. U.; John Hawk, Secretary-Treasurer, Atlantic & Gulf District, Seafarer's International Union; V. J. Malone, Secretary, Pacific Coast Marine Firemen, Oilers, Watertenders & Wipers Assn.; James W. Burke, Secretary, Marine Cooks & Stewards Assn.

• Dated May 4, 1942, Washington, D. C.

[fol. 222] May 8, 1942.

Mr. Joseph Curran, President, National Maritime Union of America, 346 West 17th Street, New York, New York.

Dear Mr. Curran:

I have your letter of May 7, 1942, asking for clarification of the Statement of Policy on certain points. You know the controversy which has been going on about the Navy taking over the Merchant Marine and about adoption of uniform Rules and Regulations to supplant the existing collective bargaining agreements. It is against this background that the Statement of Policy has been put forth. I want to emphasize that it is a statement of policy and not a set of rules. There are therefore many details which will have to be worked out in the light of the Statement of Policy as we go along. This I am sure we shall be able to do effectively and in a cooperative spirit.

Question No. 1: What guarantee is there in those proposals that the open shop is not frozen and that our right to organize in unorganized steamship companies will not be impaired?

Answer: The subject is not covered by the Statement of Policy; whatever your rights may be in this respect, those rights remain unaffected by the Statement of Policy.

Question No. 2: Does this Statement of Policy propose that the union shall not be able to seek collective bargaining agreements with unorganized steamship companies after they have been organized?

Answer: No.

Question No. 3: In section 3, under Discipline, paragraph 2, does the elimination of crews' mass meetings, crews' committees, and other similar meetings for groups aboard ship, comprehend that there shall be no meetings permitted aboard ship. For example, we have now and are promoting safety meetings aboard ship, and meetings having as their basis the teaching of newly trained seamen in the art of seamanship between their watches?

[fol. 223] Answer: As paragraph (1) in Section 3 under the heading "Discipline" indicates, it is considered sound policy under war conditions that the authority of the Master be strictly maintained. Paragraph 3 contemplates that no meetings be permitted aboard ship "where they tend in any way to interfere with the ship's operation"; and of

this the Master must be the judge. If there may be some Masters who will abuse their discretion in this regard, it is thought better in view of war conditions to remedy abuses ashore rather than to have arguments and disputes aboard ship whether a given meeting interferes with the ship's operation." Should any such abuses develop, the War Shipping Administration will remedy them.

Question No. 4: In the same paragraph, will we be able to have meetings for the purpose of electing the spokesmen. Under our constitution, spokesmen for departments on ships must be elected at ships' meetings.

Answer: Since the Statement of Policy contemplates recognition of a spokesman for each department, ships' meetings may be held for the purpose of electing spokesmen as long as they don't interfere with the ships' operation.

Question No. 5: We are concerned with the fact that there is rumor that such spokesmen are to take the place of union officers. In other words, when the vessel arrives in United States ports, will the practice that is contained in our contracts for union officials to board the vessel to meet with the crew for the purpose of taking up any problems they may have continue, or does this Statement of Policy comprehend the elimination of that policy?

Answer: Section 2 of the Statement of Policy explicitly provides that the provisions of existing collective bargaining agreements be continued and observed. Whatever your contractual rights may be in respect of your officials boarding vessels, those rights remain unaffected.

Question No. 6: It is the feeling of our officers that there is lack of clarity on one or more important question. If the agents that the union now has contracts with were eliminated and new agents established who did not have [fol. 224] previous relationship with the union, would that eliminate our contracts or would the War Shipping Administration, through Section 2, continue our collective bargaining contracts in that event?

Answer: There is no intention and the War Shipping Administration is committed not to "eliminate" the agents who now have contracts with the union. On the other hand, the War Shipping Administration must have full freedom to reallocate vessels from one service to another as the needs of the war effort may require and change agents accordingly, it being the settled policy of the War Shipping Administration to assign vessels in a particular service

to agents who have been operating in that service. The War Shipping Administration will under no circumstances use this freedom of action for the purpose of favoring agents who do not have relationships with the unions, against those who have.

To the extent that this question touches the matter of pools about which you have given me your views in your letter of May 1, 1942, the answer must be subject to whatever comprehensive plan may be formulated in that regard. Such a plan will make provision for the continuation of the unions as a source of supply of officers and men.

Very truly yours, (Sgd.) Edward Macauley, Assistant to the Administrator, War Shipping Administration.

[fol. 225] Statement of Policy

I. *Existing Collective Bargaining Agreements to Stand.*

Article 3 (d) of the Service Agreement signed between Agents and the War Shipping Administration under which Agents handle vessels owned by or bareboat chartered to the War Shipping Administration shall remain in force and effect. This article reads as follows:

"(d) The General Agent shall procure the Master of the vessels operated hereunder subject to the approval of the United States. The Master shall be an agent and employee of the United States, and shall have and exercise full control, responsibility and authority with respect to the navigation and management of the vessel. The General Agent shall procure and make available to the Master for engagement by him the officers and men required by him to fill the complement of the vessel. Such officers and men shall be procured by the General Agent through the usual channels and in accordance with the customary practices of commercial operators and upon the terms and conditions prevailing in the particular service or services in which the vessels are to be operated from time to time. The officers and members of the crew shall be subject only to the orders of the Master. All such persons shall be

paid in the customary manner with funds provided by the United States hereunder."

The intention of this clause is that in order to make available the full supply of officers and men and to avoid favoritism as to conditions between one agent and another, with respect to preference of employment or use of union hiring halls, all agents will be required to procure officers and men in accordance with such conditions.

[fol. 226] II. *Wages and Working Conditions.*

It is hereby agreed that the provisions of existing collective bargaining agreements be continued and observed for the duration of the war unless changed by mutual agreement between the War Shipping Administration and the unions, or in case of a deadlock by decision of the Maritime War Emergency Board.

III. *Discipline.*

The conditions aboard ship, including common hazard and peril, in war time require the highest standard of order and discipline. To accomplish this purpose, the unions agree to cooperate fully with the War Shipping Administration, as follows:

(1) Maintenance of the authority of the Master and of discipline including strict and prompt enforcement of laws relating to conduct aboard ship.

(2) Elimination of crews' mass meetings, crews' committees and other similar meetings or groups aboard ship where they tend in any way to interfere with the ship's operation. However, one man in each department will be recognized as the spokesman for that department, but all disputes shall be settled only upon termination of the voyage in a continental port of the United States pursuant to procedures laid down in the collective bargaining agreements.

(3) Without waiving the right to strike, the unions hereby give firm assurance and gua-*na*tee that the exer- [fol. 227] cise of this right will be absolutely withheld for the duration of the war.

IV. *Duration.*

The above provisions shall apply on all vessels of the United States Merchant Marine, owned by or bareboat chartered to the War Shipping Administration as long as the War Shipping Administration has jurisdiction of vessels of the American Merchant Marine.

On behalf of the National Maritime Union of America, (Sgd.) Joseph Curran, President; E. S. Land, Edward Macauley, for the War Shipping Administration. William Radner.

Dated May 12, 1942, Washington, D. C.

[fol. 228] DEFENDANT'S EXHIBIT No. 26

Part 306—General Agents and Agents

(General Order No. 21)

Service Agreement Form

Whereas by Executive Order No. 9054, dated February 7, 1942, the President established the War Shipping Administration to assure the most effective utilization of the shipping of the United States for the successful prosecution of the war; and

Whereas the United States of America, acting by and through the Administrator, War Shipping Administration, has appointed certain agents and general agents, and will from time to time appoint additional ones, to conduct the business of vessels assigned to such agents under forms of Service Agreements (TCA-4/4/42 and GAA-4/4/42), approved by the Administrator on April 8, 1942, and

Whereas it is desirable for agents and general agents to appoint berth sub-agents to perform the functions of the agent or general agent under certain circumstances; and

Whereas the Administrator deems it appropriate to issue the following Order concerning the handling of vessels assigned to agents and general agents under service agreements, and the appointment of berth sub-agents by agents and general agents;

Now, Therefore, it is hereby ordered, That:

§ 306.43 *Definitions.* The Terms "agent" (§ 306.4), "general agent" (§ 306.3, page 6583), "berth sub-agent" (§ 306.5 (a)), and "sub-agent" (§ 306.5 (b)) as defined in General Order No. 12, as amended, shall have the same meaning in this order.

§ 306.44 *Service agreements* (GAA-4/4/42). Service agreements entered into between the United States of America, acting by and through the Administrator, War Shipping Administration, with shipping companies appointing them as general agents to manage and conduct the business of vessels (excluding tankers, small craft, salvage and rescue vessels, tugs and barges, and other vessels from time to time excluded with the approval of the Administrator) of which the War Shipping Administration is owner or owner *pro hac vice,* and assigned to the general agents by the United States from time to time, shall be as follows:

[fol. 229] DEFENDANT'S EXHIBIT NO. 27

§ 306.3 *General agents defined.* A general agent is one who takes care of the vessel's business on behalf of the War Shipping Administration, under a standard form of service agreement (GAA-4-4-42), appoints agents as directed by the War Shipping Administration to handle those functions which relate to the handling of the cargo and functions incidental thereto, and assumes those duties when not otherwise instructed, obtains all accounting for all revenue and expenses and accounts to the War Shipping Administration for all business of the vessel.

Federal Register, August 19, 1942, p. 6583.

[fol. 230] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

Upon Consideration of the application of counsel for the petitioner,

It Is Ordered that the time for filing a petition for certiorari in the above-entitled cause be, and the same is

hereby, extended to and including October 29th, 1945, provided the time for filing a petition has not already expired.

Wiley Rutledge, Associate Justice of the Supreme Court of the United States.

Dated this 17th day of September, 1945.

[fol. 231] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

Upon Consideration of the application of counsel for the petitioner, counsel for the respondent having no objection,

It Is Ordered that the time for filing a petition for certiorari in the above-entitled cause be, and the same is hereby, extended to and including Nov. 28, 1945.

Wm. O. Douglas, Associate Justice of the Supreme Court of the United States.

Dated this 23rd day of October, 1945.

[fol. 232] IN THE SUPREME COURT OF THE UNITED STATES

STIPULATION RE PRINTING OF RECORD—Filed October 29, 1945

For the purpose of Rule 38.8 of the Rules of the Supreme Court of the United States, it is hereby stipulated that the entire record, as filed in this Court, is deemed necessary to be printed for the consideration of a petition for writ of certiorari, except that with reference to exhibits and praecipe only the following portions need be printed:

* * * * * * *

1. Print all of Exhibits 1, 17, 21, 25, 26 and 27.
2. Print only page 1 of Exhibit 16.
3. In lieu of printing the photostatic copy of four envelopes designated as Exhibit 2, 2a, 2b and 2c, print only Exhibit 2c.
4. Exhibit 13.

Print all of page 2, entitled "Shipping Articles," except the provisions and tables between the last line in the second

paragraph reading "exceeding twelve (12) calendar months" and the paragraph beginning with the line "And the said crew agree"—etc., inserting appropriate designations to indicate that a portion of the document has been omitted.

Omit all footnotes on page 2 and the lines following the same, inserting appropriate designation to indicate that a [fol. 233] portion of the document has been omitted.

It is stipulated that following the typed insert signed by Harold M. Ball and Henry Hoeppner and appearing on page 2 of the photostatic copy of said exhibit and in lieu of the portions of said exhibit partially covered by said insert, the following shall be printed:

> "In Witness Whereof the said parties have subscribed their names hereto on the days against their respective signatures mentioned."
>
> (Signed) "Henry Hoeppner, Master of c o Moore-McCormack S. S. Lines, 200 Pine Str., San Francisco."

The column of the names of seamen signing on page 4 of Exhibit 13 shall be printed, (i.e. the page containing the signature of Cecil I. Hust.) but all other columns shall be omitted, with appropriate designations to indicate that such columns have been omitted.

Omit the attached two memoranda from Arthur Joachims to Shipping Commissioner.

Page- 3, 5 and following shall be omitted with designations to indicate that they have been omitted.

5. The praecipe to the Clerk of the Supreme Court of Oregon and attached stipulation for preparation of the record shall be printed, except that the designation of lines and pages of the transcript of testimony to be omitted and listed under item 17 on pages 2, 3, 4, 5 and 6 need not be printed and the word "pleading" under item 6 on page 1 of said praecipe shall be corrected to read "verdict."

[fol. 234] 6. This stipulation shall be printed, but the document filed by petitioner entitled "Sfatement of Points Relied Upon and Designation of Parts of the Record to be Printed" need not be printed.

It is stipulated that in determining the appropriate place in said record in which to print the above designated exhibits and portions thereof the Clerk of the above entitled

Court shall exercise his discretion in accordance with the established custom and practice of said Court, but that in the absence of such custom or practice said exhibits shall be appended at the back of said record rather than inserted in the transcript of testimony at the points where said exhibits were admitted into evidence.

It is further stipulated that although exhibits 14, 15, 18, 19 and 20 are not printed and that although exhibit 13 is not printed in full, all of said exhibits shall remain as parts of said record and that any portions of said exhibits may be referred to by the parties in briefs or in arguments as well as by the Court.

Dated this 26th day of October 1945.

Edwin D. Hicks, Of Attorneys for Petitioner; Erskine Wood, Of Attorneys for Respondent.

[fol. 235] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 4, 1946

The petition herein for a writ of certiorari to the Supreme Court of the State of Oregon is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.